

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

RUBY CARR,

Plaintiff,

v.

STATE OF ALABAMA DEPARTMENT
OF YOUTH SERVICES, et al.,

Defendants.

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* CASE NO.: 2:07-cv-532-MHT

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DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COME NOW the Defendants, by and through the undersigned counsel, and hereby move for summary judgment in their favor on all counts in the Amended Complaint. As grounds, the Defendants state that there are no genuine issues of material fact and that the Defendants are entitled to summary judgment in their favor as a matter. In support of this Motion, the Defendants adopt and incorporate in its entirety, the previously filed Motion to Dismiss (Doc. 24). The Defendants also submit the following:

1. Wood Memo, dated 2/17/05, attached hereto as Ex. 1;
2. 3/17/05 EEOC Charge, attached hereto as Ex. 2;
3. Settlement Agreement, attached hereto as Ex. 3;
4. Smitherman Admin. Hearing testimony, attached hereto as Ex. 4;
5. 1/23/06 Memorandum from Carr, attached hereto as Ex. 5;
6. Sticky Note, attached hereto as Ex. 6;
7. 3/23/06 Memorandum, attached hereto as Ex. 7;
8. Letter of Grievance, attached hereto as Ex. 8;
9. Fact-Finding hearing transcript, attached hereto as Ex. 9;

10. Audio-tape of 4/13/06 meeting, attached hereto as Ex. 10;
11. 4/19/06 Memorandum, attached hereto as Ex. 11;
12. Email, attached hereto as Ex. 12;
13. Warning, attached hereto as Ex. 13;
14. Reprimand, attached hereto as Ex. 14;
15. Note, attached hereto as Ex. 15;
16. 5/10/06 Memorandum, attached hereto as Ex. 16;
17. 5/12/06 Letter, attached hereto as Ex. 17;
18. Fact-Finding Hearing excerpts, attached hereto as Ex. 18;
19. 6/23/06 Letter, attached hereto as Ex. 19;
20. Administrative hearing excerpt, attached hereto as Ex. 20;
21. CJIS/Alacourt printout, attached hereto as Ex. 21;
22. 12/06 EEOC Charge, attached hereto as Ex. 22;
23. Carr Admin. Hearing testimony, attached hereto as Ex. 23; and
24. 5/10/06 Carr Memorandum, attached hereto as Ex. 24.

WHEREFORE the Defendants respectfully request the entry of summary judgment in their favor on all counts in the Amended Complaint.

/s/ R. Austin Huffaker, Jr.
R. AUSTIN HUFFAKER, JR.
ASB-3422-F55R
Attorney for Defendants
Dept. of Youth Services, J. Walter Wood,
Troy King, T. Dudley Perry, Tracy
Smitherman

OF COUNSEL:

**RUSHTON, STAKELY, JOHNSTON
& GARRETT, P.A.**

Post Office Box 270

Montgomery, AL 36101-0270

334/206-3126 (telephone)

334/481-0815 (facsimile)

CERTIFICATE OF FILING

I hereby certify that on July 30th, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Guy D. Chappell, III, Esq.

Frederic A. Bolling, Esq.

H. Lewis Gillis, Esq.

Roslyn Crews, Esq.

T. Dudley Perry, Jr., Esq.

E. Diane Gamble, Esq.

Mark S. Boardman, Esq.

/s/ R. Austin Huffaker, Jr.

OF COUNSEL

Employee Exhibit I



BOB RILEY
GOVERNOR

State of Alabama
Department of Youth Services

Post Office Box 66
Mt Meigs, Alabama 36057



J. WALTER WOOD
EXECUTIVE DIRECTOR

February 17, 2005

MEMORANDUM

TO: Tim Davis
Allen Peaton
Debra Spann ✓

FROM: J. Walter Wood, Jr.
Executive Director *JWW*

RE: Ruby Carr

After reviewing responses to Ms. Ruby Carr's concerns and having asked Ms. Grant to meet with her to attempt to clarify her concerns, I personally met with Ms. Carr to discuss her continuing concerns. We discussed and reviewed materials prepared by her outlining her concerns regarding: (1) LWOP the week of July 5, 2004, (2) confusion surrounding her work, training, and unit re-assignments, (3) subsequent reprimand, (4) three reprimands regarding her Failure to Meet with Ms. Rankins concerning the June 28-29 assignment, and (5) various other concerns e.g., overtime, hostile environment, and medical issues.

Regarding LWOP for forty (40) hours the week of July 5, 2004, please adjust Ms. Carr's record to reflect personal leave for each the five days docked and issue Ms. Carr's pay as she requested.

Regarding Ms. Carr's unit transfer around the end of June, please restore any leave or pay deducted on June 29 and/or June 30.

Also, regarding the June 28 and June 29 confusion, please remove the reprimands regarding Failure to Report.

Regarding Ms. Carr's appraisal, please delete the Failure to Report Reprimand reference to June 28 and June 29, and restore her full appraisal score for the appraisal period.

Regarding the three subsequent reprimands for Failure to Meet with Ms. Rankins, please remove them from Ms. Carr's file.

Regarding overtime worked, please reimburse Ms. Carr as requested for 312 hours



0062

Tim Davis, Allen Peaton, Debra Spann
Page 2
February 17, 2005

In addition to the above, please have Ms. Spann confirm her conversation with Ms. Carr regarding Ms. Carr's "sexual harassment" and/or "hostile environment" allegation. Please advise me if you have any questions.

JWWJL/gjw
cc: Dudley Perry

0063

EEOC FORM 131 (5/01)

U. S. Equal Employment Opportunity Commission

DEBRA SPANN
PERSONNEL DIRECTOR
ALABAMA DEPT. OF YOUTH SE
P. O. BOX 66
MOUNT MEIGS, AL 36057

PERSON FILING CHARGE

Ruby H. Carr

THIS PERSON (check one or both)

☒ Claims To Be Aggrieved☐ Is Filing on Behalf of Other(s)

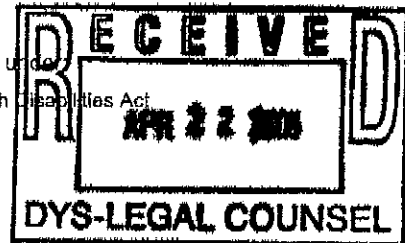
EEOC CHARGE NO.

130-2005-01900

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under

☒ Title VII of the Civil Rights Act☐ The Americans with Disabilities Act☐ The Age Discrimination in Employment Act☐ The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. ☐ No action is required by you at this time2. ☐ Please call the EEOC Representative listed below concerning the further handling of this charge.3. ☒ Please provide by **14-MAY-05** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.4. ☐ Please respond fully by _____ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.5. ☒ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate please say so on the enclosed form and respond by **29-APR-05** to **Debra B. Leo, ADR Coordinator, at (205) 212-2033**. If you **DO NOT** wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Debra B. Leo,
ADR Coordinator

EEOC Representative

Telephone **(205) 212-2033**

Birmingham District Office
Ridge Park Place
1130 22nd Street, South
Birmingham, AL 35205

Enclosure(s): ☒ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION


☒ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ AGE ☐ DISABILITY ☐ RETALIATION ☐ OTHER

See enclosed copy of charge of discrimination.



Date Apr 14, 2005	Name / Title of Authorized Official Bernice Williams-Kimbrough, District Director	Signature <i>Bernice Williams-Kimbrough</i>
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EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: _____ Agency(ies) Charge No(s): 130-2005-01900 <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	
and EEOC			
<small>State or local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) Ms. Ruby H. Carr		Home Phone No. (Incl Area Code) (334) 864-0576	Date of Birth 06-22-1965
Street Address 2167 Co. Road 101 Lafayette, AL 36862			
City, State and ZIP Code			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name ALABAMA DEPT OF YOUTH SERVICES		No. Employees, Members 500 or More	Phone No. (Include Area Code) (334) 215-3807
Street Address P. O. Box 56, 100 Industrial Road, Mount Meigs, AL 36057			
City, State and ZIP Code			
Name ALABAMA DEPT OF YOUTH SERVICES		No. Employees, Members 500 or More	Phone No. (Include Area Code) (334) 215-3807
Street Address P. O. Box 56, 100 Industrial Road, Mount Meigs, AL 36057			
City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es)) <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 07-23-2004 01-24-2005 <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I have been employed by the above named employer for five and one half years, as a Youth Service Aide. Around July 23, 2004, I became aware of a pattern of pay discrimination against me. The employer has discriminated against me in my terms and conditions of employment as it relates to my pay specifically by failing to record my time properly, failing to pay overtime, docking of my pay and placing disciplinary actions in my personnel file. I started to report policy violations as far back as March of 2004. I continue to report violations to the department the most recent being August 2004 and have received nothing but Retaliation as a result of my complaints.</p> <p>I have never been afforded a reason for the difference in treatment that I continue to receive.</p> <p>I believe I am being discriminated against because of my Race, Black and my Sex, Female, in violation of Title VII of the 1964, Civil Rights Act, as amended. I have been Retaliated against because I continue to complain of protected acts, which is also in violation of Title VII of the 1964, Civil Rights Act, as amended...</p> <p style="text-align: center; margin-top: 20px;">MAR 26</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
SIGNATURE OF COMPLAINANT <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> 3/25/2005 <small>Date</small> </div> <div style="text-align: center;">  <small>Charging Party Signature</small> </div> </div>		SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE <small>(month, day, year)</small>	

Enclosure with EEOC
Form 131 (5/01)

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), 4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. Where a charge . . . has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent . . . shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

CP Enclosure with EEOC Form 5 (5/01)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (5/01).

2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117.

3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.

4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.

5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII or the ADA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Birmingham District Office

Ridge Park Place
1130 22nd Street South, Suite 2000
Birmingham, AL 35205
(205) 731-0082
TTY (205) 731-0175
FAX (205) 731-2101

The above referenced charge is about to begin the long investigative and legal adjudication process. At this point, the Equal Employment Opportunity Commission invites both parties to pause and seriously consider the possibility of resolving the disagreement through Alternative Dispute Resolution (ADR).

Mediation focuses on a resolution of the underlying dispute by addressing the interests of both parties. It is not a form for reaching a determination on whether discrimination occurred. Therefore, any agreement reached during mediation does not constitute an admission that discrimination occurred.

There is no fee for mediation. If you are interested in resolving this complaint through mediation you do not need to provide a position statement or requested documentation at this time. If a resolution is reached, an agreement will be signed and the case will be closed. The Charging Party will not be issued a Notice of Right to Sue.

If a charge is not resolved during the mediation process, you will then respond to the charge and it will be processed just like any other charge. Since the entire mediation process is strictly confidential, information revealed during the mediation session cannot be disclosed to anyone including other EEOC personnel. Therefore, it cannot be used during any subsequent investigation.

Please return the signed form within ten (10) days of your receipt of this notice to begin the mediation process.

10/13/2005 15:21 2153872

FAX NO: :205 212 2063

Oct. 12 2005 03:37PM P2

FROM :EEOC BIDO

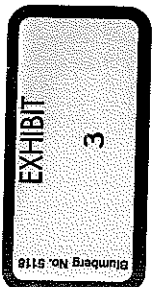
CONFIDENTIAL**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Birmingham District Office**

Ridge Park Place
1130 22nd Street, South, Suite 2000
Birmingham, AL 35205
(205) 212-2100
TTY (205) 212-2112
FAX (205) 212-2105

NEGOTIATED SETTLEMENT AGREEMENT**GENERAL PROVISIONS**

The following Agreement refers to Charge Number: 130 2005 01900 as filed with the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act of 1964, (Title VII), as amended, by Ruby H. Carr, Charging Party.

1. **Commission May Review Compliance With Agreement** - Alabama Department of Youth Services that the Commission, on request of any Charging Party or on its own motion, may review compliance with this Agreement. As part of such review, the Commission may require written reports concerning compliance, and inspect the premises, examine witnesses, and examine and copy any documents.
2. **Agreement Does Not Constitute Admission of Violations** - It is understood that this Agreement does not constitute an admission by Alabama Department of Youth Services of any violation of Title VII of the Civil Rights Act of 1964, as amended.
3. **Charging Party's Covenant Not To Sue** - Charging Party hereby agrees not to sue Respondent with respect to the matters which were alleged in the above referenced-charge(s) filed with the Equal Employment Opportunity Commission, subject to performance by the Respondent of the promises and representations contained herein.
4. **Retaliation Prohibited** - The Parties agree that there shall be no discrimination or retaliation of any kind against any person because of opposition to any practice declared unlawful under Title VII; or because of the filing of a charge; giving of testimony or assistance; or participation in any manner in any investigation, proceeding, or hearing under Title VII.
5. **The Respondent agrees that it shall comply with all requirements of Title VII of the Civil Rights Act of 1964, as amended.**

CONFIDENTIAL

10/13/2005 15:21 2153872

FAX NO. : 205 212 2053

Oct. 12 2005 03:37PM P3

FROM : SEOC BIDO

CONFIDENTIAL

**Negotiated Settlement Agreement
Carr v. Alabama Department of Youth Services**

Page 2

6. All parties agree that the settlement of the instant charge is intended to be without prejudice to any other case Respondent may have pending before the U. S. Equal Employment Opportunity Commission.

(A). In exchange for the satisfactory fulfillment by the Alabama Department of Youth Services, of the promises contained in paragraph one (1) of this agreement, Ruby H. Carr, Charging Party agrees not to institute a lawsuit with respect to the above-referenced charge and further agrees to drop all charges filed with the Equal Employment Opportunity Commission regarding the issues allege in this charge. Ruby H. Carr further agrees to pay all legal withholdings required by law.

(1). In exchange for the promises of Ruby H. Carr, contained in paragraph (2) of this Agreement, Alabama Department of Youth Services agrees to the following:

- a. The adjustment of Ruby H. Carr's record to reflect forty (40) hours of annual leave for the week of July 5-9, 2004; restoration of any leave or pay deducted for June 28, 2004 and June 29, 2004; removal of the disciplinary actions from Ruby H. Carr's record regarding the failure to report to work dated June 30 and July 1, 2004; re-evaluation and restore Ms. Carr's complete appraisal for the following period: September 1, 2003, September 1, 2004, and August 11, 2004;
- b. The removal of all three subsequent reprimands for acts of insubordination (Failure To Meet with Ms. Rankins) from Ruby H. Carr's personnel file;
- c. Reimbursement of the sum of \$5,382.00, equivalent to 312 hours of overtime and Attorney fees. The Alabama Department of Youth Services agree to make a check payable to Ruby H. Carr in the amount of \$4,082.00 and a check payable to Attorney Norman Hurst in the amount of \$1,300 in attorney fees in full settlement of any and all claims against the Alabama Department of Youth Services, to be effective at the next pay period immediately following the date of execution of this agreement;
- d. To be permanently re-assign full time to current position in Department of Youth Services, District 210.

I, Ruby H. Carr, hereby declare that the terms of this agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making full and final compromise adjustment and settlement of any and all disputed claims in this charge.

CONFIDENTIAL

10/19/2005 11:14 2153872
 CT-13-2005 09:54 AM CAREERTECH

LEGAL OFFICE

3342696449

P. 01

AL DYS

3342696449

PAGE 03/84

10/11/2005 15:04 3342153811
 OCT-11-2005 02:13 PM CAREERTECH

OCT 27 2005 02:21 PM P4

FROM : EEOC HHSO

PRK NO. : 205 212 2053

Negotiated Settlement Agreement
Ruby H. Carr v. Alabama Department of Youth Services
Page 3

7. The Alabama Department of Youth Services agrees to provide written notice to the Director and the Investigator of the Birmingham District Office within ten (10) days of satisfying each obligation specified in paragraph one (1), subparagraphs a-d of this Agreement.
8. It is mutually agreed that this Agreement is effective as of the date of the Commission's approval.
9. These parties agree that this Agreement may be used as evidence in a subsequent proceeding in which any of the parties alleges a breach of this Agreement.

This Agreement is entered into solely for the purpose of resolving the grievance without further proceedings, and neither party concedes the validity of the positions of the other party in connection with this matter. Nothing contained herein shall constitute evidence, an admission by either party to this matter, or adjudication with respect to any allegation of the grievance, or any wrongdoing, misconduct or liability on the part of the EEOC.

It is agreed between the Parties that the terms of this Agreement are not precedential.

By execution of this Agreement, the Equal Employment Opportunity Commission withdraws this complaint filed by Ruby H. Carr on _____, 2005.

10-17-05
 Date

Dudley Perry, Jr.
 Dudley Perry, Jr., Deputy Attorney General
 The Alabama Department of Youth

October 11, 2005
 Date

Ruby H. Carr
 Ruby H. Carr
 Charging Party

CONFIDENTIAL

Negotiated Settlement Agreement
Carr v. Alabama Department of Youth Services
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CONFIDENTIAL

I recommend the approval of this Negotiated Settlement Agreement:

October 18, 2005
Date

Rita W. Sterling
Rita W. Sterling, Investigator

10/19/2005
Date

Arthur L. McGhee
Arthur McGhee, Supervisor

10. In reliance on the promises made in paragraph (1) subparagraphs a - d , the U.S. Equal Employment Opportunity Commission agrees to terminate the investigation which it has begun with respect to the above referenced charge and not to use it as the jurisdictional basis for a civil action under Title VII of the Civil Rights Act of 1964, as amended. The Equal Employment Opportunity Commission does not waive or in any manner limit its right to process or seek relief in any other charge or investigation including, but not limited to, a charge filed by a member of the Commission against the Respondent.

On behalf of the Commission

October 29, 2005
Date

Bernice Williams-Kimbrough
Bernice Williams-Kimbrough
District Director

CONFIDENTIAL

BEFORE THE
STATE OF ALABAMA
DEPARTMENT OF PERSONNEL
MONTGOMERY, ALABAMA

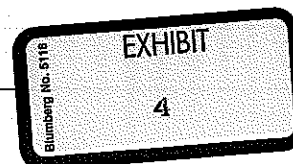
IN THE MATTER OF: RUBY CARR
TERMINATION APPEAL

* * * * *

TESTIMONY AND PROCEEDINGS, taken before
the Honorable Julia J. Weller, Administrative Law
Judge, at The Folsom Administration Building, 64
North Union Street, Montgomery, Alabama, on
Tuesday, September 19, 2006, commencing at
approximately 9:41 a.m., and reported by Laura A.
Head, Licensed Court Reporter and Commissioner
for the State of Alabama at Large.

* * * * *

*Laura A. Head, Court Reporter
(334) 286-4938 or (334) 202-4851*



APPEARANCES

ADMINISTRATIVE LAW JUDGE:

Honorable Julia J. Weller
Administrative Law Judge
Alabama Department of Personnel
Folsom Administrative Building
64 North Union Street
Montgomery, Alabama 36130

FOR THE DEPARTMENT OF YOUTH SERVICES:

Honorable T. Dudley Perry, Jr.
Deputy Attorney General
Alabama Department of Youth Services
P. O. Box 66
Mt. Meigs, Alabama 36057

FOR THE EMPLOYEE RUBY CARR:

Honorable Jason Manasco
Legal Counsel
Alabama State Employees Association
110 N. Jackson Street
Montgomery, Alabama 36104

* * * * *

EXAMINATION INDEX

TRACY SMITHERMAN

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* * * * *

1 just really bizarre type behavior.

2 The progressive disciplinary procedure
3 was unsuccessful. And in fact, Ms. Carr only
4 raised her own insubordination in response to
5 any type of supervision or any type of
6 direction from her supervisor.

7 THE COURT: All right. Mr. Manasco?

8 MR. MANASCO: At this point, the
9 employee waives opening statement. We will
10 submit their case on testimony.

11 THE COURT: All right. Ms. Carr, do
12 you understand the charges that have been
13 brought in this case?

14 MS. CARR: Yes, ma'am.

15 THE COURT: And the grounds for the
16 termination?

17 MS. CARR: Yes, ma'am.

18 THE COURT: All right. Let's proceed.
19 Call your first witness.

20

21 TRACY SMITHERMAN

22 The witness, having first been duly
23 sworn to speak the truth, the whole truth, and

1 nothing but the truth, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. PERRY:

4 Q. Would you state your name for the Record?

5 A. My name is Tracy, T-r-a-c-y, Smitherman,
6 S-m-i-t-h-e-r-m-a-n.

7 Q. All right. You and I work closely together,
8 so I don't need to introduce myself to you.
9 Tell the Hearing Officer what you do, where
10 you work, and your association with
11 Ms. Carr.

12 A. Okay. I work for the Department of Youth
13 Services. I've been there this is going on
14 my ninth year. Been there since '97. I am
15 the Curriculum and Federal Programs
16 Coordinator.

17 Q. For?

18 A. For the School District, the DYS School
19 District, School District 210. We are
20 responsible for the schools that provide
21 educational services for the children who are
22 in custody of the Department of Youth
23 Services, and we have five schools across the

1 state that I supervise. I handle federal
2 programs, curriculum, personnel as in PEPE
3 which is the evaluation of teachers and
4 principals, many other duties that
5 Dr. Stewart, the superintendent, requires of
6 me. Ms. Carr was assigned to me to assist me
7 in handling day-to-day paperwork and things
8 as her supervisor.

9 Q. So you were her supervisor?

10 A. Yes.

11 Q. How long did you supervise Ms. Carr
12 approximately?

13 A. A year.

14 Q. About a year. Okay.

15 A. Almost a year.

16 Q. Okay. Let me get you to think back to August
17 of 2005.

18 A. Okay.

19 Q. Well, I'll tell you what. Open that book in
20 front of you, the exhibit book, and go to
21 Exhibit Number 2.

22 A. Okay.

23 Q. What is that?

1 A. That is Ms. Carr's Preappraisal.

2 Q. For what year? When?

3 A. From September 1st, 2005 to September 1st,
4 2006.

5 Q. And on the second page, is there a date for
6 the Preappraisal signature?

7 A. August 24th, 2005.

8 Q. Okay. Did you have a conference with
9 Ms. Carr on that date?

10 A. I did. She actually typed this for me.

11 Q. Okay. Did you in that conference have a
12 discussion with Ms. Carr about her -- well,
13 did you have a discussion with her?

14 A. Yes. We talked about what her
15 responsibilities were and what my
16 expectations were and her general work.

17 Q. Okay. Were there any -- okay. Let's -- in
18 all of her previous time under your
19 supervision, have there been any problems?

20 A. No.

21 Q. Did you discuss anything with her regarding
22 her future performance in relation to her job
23 duties?

1 A. No. She just worked for me.

2 Q. Okay. All right. So basically, at this
3 point, everything is going well with this
4 employee, correct?

5 A. Correct.

6 Q. Did something change?

7 A. Yes. In January, I got a memo from Ms. Carr
8 stating that she was no longer going to
9 handle the property. And if you'll see on
10 her evaluation, that was one of the things
11 that I had put down that was her
12 responsibility was property reports.

13 Q. Okay.

14 A. It's the very first -- one of the first
15 things listed on the thing. And I had gotten
16 a memo she was going to no longer do that for
17 me.

18 Q. Okay. Flip the page and look at Exhibit
19 Number 3, tab number 3.

20 A. Okay.

21 THE COURT: What are property items?

22 Just like purchases or --

23 THE WITNESS: Well, property being --

1 you know how we have to have a state code on
2 all the purchases we do that's over five
3 hundred dollars? Federal programs has a
4 considerable amount of money that we monitor
5 that comes through our office for the school
6 district equipment, computers, those types of
7 things. And before we can pay for them, we
8 have to put a property number on them. And
9 so we have to maintain that, not only for the
10 state's requirements but for federal programs
11 because we have to document what we have
12 purchased and so on and so forth, and we have
13 to have it on inventory. So that's a way for
14 us to keep up with them.

15 Q. (By Mr. Perry:) Exhibit 3, have you ever
16 seen that?

17 A. Yes.

18 Q. Can you identify it?

19 A. Yes. It's a memo from Ms. Carr to myself.
20 That was that January 23rd memo I was just
21 talking to about.

22 Q. That's the memo that you were just referring
23 to that she said to you she would no longer

1 be responsible for --

2 A. Yes.

3 Q. Was that unusual?

4 A. Very much so.

5 Q. Up until this point, had you had any
6 difficulty with Ms. Carr following your
7 directives and paying attention to the
8 responsibilities that were within her job
9 description?

10 A. No. Once I told her something, she did it.

11 Q. All right.

12 A. Now, she would take the initiative sometimes
13 to do things, and I would have to tell her,
14 No, that's not your responsibility. And she
15 accepted that.

16 Q. Okay. What do you mean take the initiative
17 to do something that was not her
18 responsibility?

19 A. Well, if someone else in the agency asked her
20 to do something, you know, she would help
21 them if she had time. She would go and do
22 that.

23 Q. Okay. And you on occasion had done what in

1 she didn't feel it was necessary to discuss
2 it.

3 Q. Okay. Did anything else happen after that
4 with regard to Ms. Carr and her willingness
5 to perform her job duties?

6 A. On March I think it was the 23rd, I had --
7 when I had things for her to do, especially
8 as much as I'm in and out of the office, I'd
9 put a Post-it note on it, leave it at her
10 desk or hand it to her or we had a folder on
11 my desk of things for her to file, you know,
12 to-be-filed stuff, and I'd leave Post-it
13 notes and tell her what to do. Well, on I
14 think it was the 23rd of March, I left a note
15 on some items I needed shredded for her in
16 the stack of things to do, and I got it
17 back. And it said basically -- I mean, I'm
18 paraphrasing, You do it. I'm not going to do
19 it. You do it.

20 Q. Let me direct your attention. Look at
21 Exhibit 16 or tab number 16 and attached --
22 tab number 16, let me say for the Record, is
23 a transcript of the May 16, 2006

1 administrative fact-finding hearing at the
2 department. Look at the exhibits attached to
3 that, Exhibit Number 1.

4 A. Okay.

5 Q. Okay. Do you recognize that?

6 A. Yes, this is the copy of the Post-it note.

7 Q. Okay. Read what you --

8 A. The note originally when I gave it to her
9 just said shred on it. And when I got it
10 back, it had, Tracy, I need you to shred
11 these since this is teacher info. Thanks,
12 Ruby.

13 Q. All right. Was that unusual?

14 A. Yes.

15 Q. Had Ms. Carr in the past handled these types
16 of duties and responsibilities?

17 A. Absolutely.

18 Q. And --

19 A. This was the second year she had -- second
20 January, and I do -- we do recertifications
21 in January. We send out notifications to the
22 teachers to tell them, You've got to be
23 recertified this year. You can't do it more

1 than six months out. And so starting in
2 January, we do letters to send to the
3 teachers and copies of all their professional
4 development that we have documentation in the
5 files, and we make copies of it. Well, we
6 had had some of that, and we had been
7 preparing for the SACS audit. And we had a
8 lots of professional development
9 documentation there, and that's what this was
10 attached to. It was attached to that stack
11 of documentation of professional
12 development. And so this was the second year
13 she has been a part of doing this process.

14 THE COURT: But what difference would
15 it make that it's teacher info? Why would
16 you have to shred it up rather than her shred
17 it?

18 THE WITNESS: That was -- it shouldn't.

19 THE COURT: Okay.

20 THE WITNESS: She was privy -- she had
21 access to my office that had the teacher's
22 certifications, all their information in my
23 office. I had their Social Security numbers

1 because their teacher certifications are in
2 my office. It has their home addresses. She
3 has access to that. She's had to file that
4 stuff before for me. When I get new teacher
5 certifications in, she has to file that --
6 she would have to file that stuff for me.

7 THE COURT: So it doesn't have to have
8 some special --

9 THE WITNESS: No. And a person who
10 works with me understands that there are
11 certain things in our office that are
12 private, you know, and with that -- I mean,
13 that's why we wanted to shred it. We didn't
14 want it to get outside of our offices.

15 THE COURT: Right.

16 THE WITNESS: And we didn't want it to
17 get mixed up with next year's stuff because
18 then it would be confusing. So, you know,
19 she's had access to the personal information
20 time and time again. And my note at the very
21 top of this says, Old training files that had
22 already been used. So I didn't want it to
23 get mixed up. When I got it back, I didn't

1 want it to get mixed up with the stuff that
2 we had in the files.

3 Q. (By Mr. Perry:) Let me -- you and I, I don't
4 think, have ever talked about this, so I'm
5 going to break my rule here. But do I
6 understand that the information used in
7 certification specifically related to
8 training, this information we're talking
9 about, once the certification process is
10 completed, information is no longer useful
11 and it's only the certification that matters?

12 A. Yes. We use it for documentation for other
13 things, but these were extra copies.

14 Q. Oh.

15 A. These were extra copies of those items. And
16 when we write a letter to the teachers
17 telling them that you're going to be
18 recertified this year, we attach the
19 documentation that we have on that person.
20 Often they'll mail it back to us, and I think
21 that's what some of this was was some of that
22 they mailed back to us. Ms. Linda McQueen's
23 was the specific one I'm talking about.

1 Q. I understand. So you are not --

2 A. They can't use that information for their
3 next certification because once it's used,
4 you can't use it again.

5 Q. Yeah. You have to go and get more training
6 for the next year.

7 A. Correct. Well, next five years. But yes.

8 Q. Okay. Now, all right. What happened next?

9 A. Okay. That was in March.

10 Q. Anything on March 30th that you recall?

11 A. I got a memo. I had been -- I think I had
12 been out of town, and I got a memo from
13 Ms. Carr about the Gateway laptop computers.
14 And it was a complaint letter. Basically
15 what it was, it was a letter. She was
16 complaining about this and complaining about
17 that and a lots of it that didn't have --
18 pertain to her, you know. It had to do with
19 other individuals and --

20 Q. Look at Exhibit Number 4. I believe that's
21 under tab number 4. This is confusing. Some
22 of it -- again, I've got this transcript of
23 the hearing, and there are exhibits attached

1 to that which also are numbered --

2 A. Yeah, this is the memo.

3 Q. But I'm talking about tab number 4.

4 A. Got it. This is a memo to me from Ms. Carr.

5 Q. All right. And obviously the document will
6 speak for itself. But the substance of the
7 memo was what?

8 A. She was complaining that she didn't have a
9 laptop, that she had spoken to a secretary at
10 one of the schools and the school secretary
11 had a laptop and Ms. Carr felt that she
12 should get a laptop. And she referenced down
13 at the bottom about issuing computers to
14 teachers, and she was no longer -- she had
15 already disassociated herself with the
16 property with the January -- she had already
17 pulled herself out of it, and she's still
18 dealing with it.

19 Q. And you allowed her to pull herself out of
20 it.

21 A. Absolutely.

22 Q. That was that first, now I guess looking in
23 the rearview mirror, act of insubordination

1 which you did not take any action on.

2 A. Correct.

3 Q. And now she's writing a memo. How does this
4 memo relate to that task or set of tasks or
5 responsibilities that she relinquished?

6 A. Well, she had been filing in my office and,
7 you know, I told you about the thing where
8 she had to file stuff. And one of the items
9 she saw was this property form and -- may I
10 take it out?

11 Q. You may.

12 A. And this is the state property form. And
13 when we give an item to someone, we make them
14 sign for it. And this was one where this
15 secretary had signed for it, and it was in
16 that stack of stuff for Ms. Carr to file.

17 Q. So --

18 A. So she read it, and she realized somebody had
19 something she didn't have.

20 Q. So in other words --

21 A. In a different office.

22 Q. Okay. So she had previously had
23 responsibility for what? Gathering these

1 secretary at the Chalkville School -- the
2 Sequoyah School at the Chalkville Campus.

3 Q. That's a --

4 A. And she spoke to the Technology Coordinator
5 about it.

6 Q. And you know that because that's referenced
7 in her memo.

8 A. In her memo, uh-huh.

9 Q. Okay. Now, what did you do, if anything, in
10 response?

11 A. I wrote her a memo.

12 Q. And do you have that?

13 A. Yes. It's your exhibit -- the Exhibit 5, the
14 next one.

15 Q. Okay. Again, it's going to speak for
16 itself. But what's the substance here?

17 A. The substance is I told her I wasn't privy to
18 discuss equipment with her. She relinquished
19 herself and that she had done so in her memo
20 and that I felt that she had violated
21 confidence because she was discussing this
22 with other people outside of the office. And
23 I told her I expected her to follow chain of

1 command and remain -- you know, stay within
2 her responsibilities of her position.

3 Q. Did you have any conversations with Ms. Carr
4 about the laptop?

5 A. Later.

6 Q. All right. What -- tell the Hearing Officer
7 about the conversation.

8 A. It was in April. It was the next month, like
9 the 16th. I'd have to check my notes. But I
10 asked her, I said, Do you want a laptop. And
11 she says no. And I told her, you know -- I
12 had already told her that it was -- really
13 she didn't need a laptop for her job
14 responsibilities. Her job responsibilities
15 were in the office, and that's why she didn't
16 have a laptop. She had a full-standing,
17 brand new computer in her office. She didn't
18 need an additional laptop for her job
19 responsibilities.

20 Q. Also, one other thing. The memo that she
21 sent in which she is disseminating this
22 information and talking about the
23 conversation she's had and sending this

1 transcribe things. I mean, certain jobs need
2 certain pieces of equipment.

3 Q. Right. And somebody who, you know, doesn't
4 have a laptop but doesn't really need one who
5 gets a memo like this that says, you know,
6 So-and-so has got a laptop and you don't, is
7 that a potential problem?

8 A. Absolutely. And especially when you discuss
9 it outside of the office, it's instigating
10 issues and animosity between the other staff.

11 Q. I call that messiness. Obviously, is that a
12 good thing to have --

13 A. No.

14 Q. -- coming out of your office?

15 A. No. And as a supervisor, I don't expect it
16 to be coming from someone that works for me.

17 Q. Okay. Look at Exhibit 5. Have we covered
18 this? Okay. All right.

19 A. And I tell her that. I cannot tolerate that
20 someone in your position will do that. In
21 that memo on the 31st, I tell her that.

22 Q. You're on your memo which is --

23 A. When I'm responding back to her, I tell her

1 that.

2 Q. That is Exhibit 5. Your Exhibit 5 -- your
3 memo is Exhibit 5.

4 A. I asked you to file, some of which were
5 confidential. Your reading those documents
6 is a violation of ethics. I cannot tolerate
7 that from someone in your position. I feel
8 that you are talented, and I'm happy to work
9 with someone with skills but violations
10 cannot be tolerated.

11 Q. Okay. What happened next?

12 A. She filed a grievance.

13 Q. Okay. Is that Exhibit 6?

14 A. Yes.

15 Q. Okay. Let's -- all right. Let me -- this is
16 April the 7th, the memo.

17 A. Yes.

18 Q. The grievance. Do you recall anything on
19 April the 6th?

20 A. I think that's maybe when I asked her --

21 Q. Okay. Do you remember the date of the
22 conversation?

23 A. I don't remember.

1 A.

2 A. Within five days of the event, the aggrieved
3 employee should discuss the matter with his
4 immediate supervisor. If not resolved,
5 written documentation of the discussion must
6 be maintained.

7 Q. All right. Before you got this memo that was
8 shot out to everybody that's listed here, was
9 there any discussion with you?

10 A. No. No. Actually, I had been -- this was
11 placed in my box.

12 Q. Okay.

13 A. Mailbox.

14 Q. All right. All right. Now, so what did you
15 do?

16 A. I was out of the office on the 7th and came
17 in on the 10th and read it, and she came by
18 my office and said, You need to meet with me
19 about my grievance. And I told her not
20 today, that, you know, I needed time and I
21 was under my rights to have time. So I
22 refused to meet with her that first day about
23 it because I hadn't had time to go through

1 it, read through it, you know, those types of
2 things. So I did not meet with her. So I
3 scheduled a meeting with her for April the
4 13th. Which I came in on the 10th, three
5 days later, I scheduled a meeting with her
6 about the grievance.

7 Q. All right. Did you record that grievance
8 meeting?

9 A. Yes, I did.

10 Q. Did you tell Ms. Carr that you were recording
11 that meeting?

12 A. Yes. And her voice and me asking her is on
13 the tape.

14 Q. Okay.

15 A. It was laid out on my desk. She was
16 sitting -- my desk is like this. She was
17 facing this way, and I was sitting here
18 facing this way. And the recorder is on my
19 desk.

20 Q. Okay. Did anything unusual happen during the
21 course of that discussion with her?

22 A. Absolutely.

23 Q. What?

1 A. Ms. Carr became aggressive. She screamed.
2 She hollered. She told me she wasn't going
3 to do anything that I told her to do. She
4 became belligerent in it. I mean, and she
5 was just yelling. And as I questioned her
6 about these items that's on the grievance, as
7 it -- as the meeting progressed, she got
8 louder and louder, and at one point, she's
9 pointing at me. And I told her, you know,
10 Don't do that. And she became hostile in
11 that arena.

12 Q. What were you asking her?

13 A. I was asking her -- I was doing a fact-
14 finding. I was trying to get an
15 understanding of what her bullets on her
16 grievance were. I was trying to understand
17 what she felt that she was being so --
18 treated so unfairly about. I mean, the items
19 she had listed here, I wanted to know the
20 specifics about each one of them so that I
21 could address them with her. And that's part
22 of the policy. I'm supposed to seek out
23 information with her and do that.

1 Q. Okay.

2 A. Until the problem is on the table, I can't
3 address it.

4 Q. Okay.

5 A. And she just got louder and louder.

6 MR. PERRY: All right. Okay. At this
7 time, I want to play this.

8 THE COURT: All right. Okay. What
9 we'll do is we'll adjourn and take a bathroom
10 break for about ten minutes, and I'll get
11 some speakers. And I think that will be
12 better for everybody rather than everybody
13 trying to hear this teeny laptop.

14 (Whereupon, a brief recess was
15 had.)

16 THE COURT: Okay. Do you want to go
17 straight to the tape now?

18 MR. PERRY: Yes.

19 THE COURT: And that's Exhibit --

20 THE WITNESS: Can we stop it? Will you
21 be stopping it or --

22 MR. PERRY: No. Let's just --

23 THE WITNESS: Can I say what I'm

1 of just trying to shut the door.

2 Q. Yes. Okay. Let's go back chronologically.
3 After the conference that you had, what
4 happened?

5 A. Let's see. Between the time of the meeting
6 and the response that I gave Ms. Carr, I sent
7 her an email. I was out of the office. I
8 was in Birmingham. Instructing her -- this
9 is on Exhibit 9 -- that I needed her to purge
10 the SACS folders. And after having met with
11 her, I understood that she had some concerns
12 about the personal information. And in
13 trying to get her to do the job, I told her
14 in the email, Just stack up the personnel
15 stuff that you're not comfortable with, you
16 know, and I'll take care of it but purge the
17 rest of the files. And we're talking it was
18 five Rubbermaid boxes of SACS files. SACS is
19 Southern Accreditation of Colleges and
20 Schools. We had gone through the
21 accreditation process, and we had files of
22 documentation. And those had to be purged
23 because we had to start doing the

1 recertification, the reaccreditation, and I
2 wanted those cleaned out. And so I sent her
3 an email telling her, you know, I was going
4 to be in Birmingham and that she needed to
5 take care of that for me, and she responded
6 stating that she didn't feel comfortable
7 performing the task.

8 Q. That's Exhibit 9, correct?

9 A. Correct.

10 Q. Read into the Record her email response to
11 you.

12 A. Okay. This is from Ms. Carr to
13 Ms. Smitherman, Subject RE: April 17th.
14 Good morning. That's the way I had
15 originally sent it to her. I do not recall
16 you informing me that you would be in
17 Birmingham on Monday, April the 17th, 2006.
18 I was out of the office the week of April
19 17th and 21st, 2006 due to death in my
20 family. As of this date, April 26th, I have
21 not received a monthly calendar from you
22 since July 2005 in reference to your out-of-
23 the-office meeting/training, et cetera.

Laura A. Head, Court Reporter
(334) 286-4938 or (334) 202-4851

1 April the 12th approximately 8:45 a.m., you
2 entered my office telling me you wanted me to
3 start taking out the documentation in the
4 SACS folders, shredding information with
5 Social Security numbers for the teachers and
6 students, file documentation for teachers in
7 their professional development folder and
8 throw everything else away. I informed you
9 that due to your response I have received
10 from you on April the 6th alleging violation
11 of ethics and confidentiality that I did not
12 feel comfortable with removing, shredding, or
13 filing documents pertaining to teachers and
14 students. Due to the letter of grievance I
15 submitted to you on April the 7th and until
16 this grievance is resolved, I still do not
17 feel comfortable with performing the tasks
18 you have assigned me to do concerning the
19 SACS documentation.

20 Q. All right. Now, the grievance that she's
21 saying that has to be resolved is the one --

22 A. That we had discussed on the --

23 Q. -- that is recorded. And your -- we heard

1 how that ended.

2 A. Correct.

3 Q. So obviously there was going to be no
4 resolution, was there?

5 A. No. Just because she filed a grievance
6 didn't mean I didn't need her to do her
7 work. I mean, I still had responsibilities.
8 We had responsibilities. We had things that
9 needed to be done in the office.

10 Q. Let me jump ahead, and we'll get back in line
11 in chronology after this. But did she ever
12 do that task?

13 A. She helped develop the files.

14 Q. No, no, no. Did she -- you asked her to take
15 care of these SACS boxes, and she answered
16 you and said, You didn't tell me you were
17 going out of town and I'm not doing it.

18 A. No.

19 Q. Did she do it?

20 A. No.

21 Q. Did she ever do it?

22 A. No. And I wrote her a memo directing her to
23 do it later on again.

1 Q. All right.

2 A. And again tried to clarify that if there's a
3 piece of document that you're uncomfortable
4 with, pull it out, set it to the side, and I
5 will handle it when I get in the office.

6 Ms. Carr had had privy to this information,
7 all these documents several times. She's the
8 one that filed the paperwork in the files for
9 me. When we set up the folders, I would
10 write on the top right-hand corner what file
11 it went into, what standard it would go into,
12 and she's the one that put the data in the
13 files originally for me. And this is the
14 same information that we have access to in
15 the office all the time.

16 Q. And she's just telling you, No, I'm not going
17 to do it.

18 A. Yes. And to this day, you know, she had
19 not -- she's not.

20 Q. Okay. Look at Exhibit 10.

21 A. This is my response to her grievance.

22 Q. Well, let me look at this. I don't know if
23 we need to go to that or not. Well, let's do

1 it. You responded to her grievance, correct?

2 A. Yes, I did on the 19th. I was going in
3 chronological order. The email was sent in
4 originally on the 17th. Her response I did
5 -- I sent to her on the 19th. She didn't
6 actually receive it until the 26th, though,
7 because of her being out of the office those
8 days she discussed.

9 Q. Okay. All right. Okay. Then what happened?

10 A. I went to -- I was going to give Ms. Carr a
11 written warning on her insubordination
12 because she had not completed the SACS
13 activities and --

14 Q. Okay.

15 A. -- her belligerent behavior on the 13th.

16 Q. All right. You may have just said this and
17 it went in one ear and out the other. Did
18 you attempt to meet with her?

19 A. I did.

20 Q. Okay. Did you testify to that just now?

21 A. I thought I did. I attempted to meet with
22 her to give her a written warning.

23 Q. No, no, no. I'm talking about the grievance

1 and the response that we just --

2 THE COURT: You just said that she
3 prepared a response.

4 MR. PERRY: I thought so.

5 Q. But I think in addition to preparing the
6 response -- well, did anything else take
7 place in regard to that written response and
8 Ms. Carr?

9 A. I'm not following you.

10 Q. Okay.

11 A. Oh, let me see. That was on the 1st? Yeah.
12 I had also given her an assignment on the --
13 on April the 27th.

14 Q. Okay. What was that assignment?

15 A. That assignment was -- can I just read it?

16 Q. Yes.

17 A. I need award memos for two thousand dollars
18 addressed to the following persons: Jimmy
19 Ellis, John Green, Philip Ward, Charles
20 Broaden, Evelyn Myles, Eleanor Sanders,
21 Roosevelt Walker, Leo Smith, Jimmy Don
22 Shoemaker, and Carolyn Stanton.

23 Q. Those are all staff?

1 a standard memo that we do to send out. This
2 is not something new that she had not seen
3 before because she had done them the previous
4 year, fiscal year. But this one, since she
5 had done it before -- Dr. SoJuan Crenshaw has
6 been hired, and she was still in the
7 transition stage. And still those items were
8 coming from my office, not her office. And
9 Dr. Stewart had told us that everything
10 should be coming from us instead of just her
11 or myself until we get through the
12 transitional stage. And so I had left this
13 for Ms. Carr to pull -- to make it up.
14 Didn't ask her to send it out. Told her to
15 type them up. And she sent it back not done
16 with a note, and I don't think the note is in
17 here. Basically she told me, You have to
18 write it yourself. Give me the words you
19 want it written on or how you want it written
20 and then I'll do it.

21 Q. Was it a sticky note or was it a handwritten
22 note when she gave it back or was there a
23 note?

1 A. There was a note.

2 Q. I thought we had it in here.

3 A. I thought we did too because you can see
4 there was a staple at the top. She wanted me
5 to put it in the exact words as I wanted it
6 developed and then she would do it.

7 Q. Okay. Did she ever do what you asked her to
8 do?

9 A. In regards to this?

10 Q. Yes.

11 A. No.

12 Q. Had she in the past done this -- this is a
13 letter that has to be done every year?

14 A. Oh, yeah. We have several federal programs
15 that we get money under. We get money under
16 Carl Perkins. We get money under Title I,
17 Title II, Title IV, Title V. And when we get
18 those in, if the budget permits that, it goes
19 to specific teachers or librarians. Yes,
20 this is something we do on a regular basis.

21 Q. So this is more than annual. It's regular.

22 A. It's regular. If we get a grant in, that a
23 librarian has wrote a grant and we have to

1 divvy out the money, it goes to them.

2 Q. And the letter is basically a form letter,
3 isn't it?

4 A. Pretty much so. It's a general letter, just,
5 you know, Ms. Womack, You've been awarded,
6 you know, two thousand dollars to use for
7 your library funds, blah, blah, blah, blah,
8 blah, and then this general information. If
9 you're wanting to -- you know, if you're
10 going to buy a contract -- if you're going to
11 buy something on contract, you've got to
12 purchase off contract, you know.

13 Q. Was Ms. Carr capable of doing this?

14 A. Absolutely.

15 Q. Had she done it before?

16 A. Yes.

17 Q. Was there any reason for her to refuse to do
18 it this time?

19 A. No.

20 Q. Okay.

21 MR. MANASCO: Is the document she read
22 from going to be offered as an exhibit?

23 MR. PERRY: It is. Sorry. Well, the

1 Q. Yeah. Okay. On April 27th, did something
2 else take place? Look at Exhibit 10.

3 A. Yes. That's when I tried to meet with
4 Ms. Carr in regards to giving her a written
5 warning.

6 Q. Okay. And what happened?

7 A. She refused to meet with me. She told me if
8 -- she came to the door and told me that if
9 that's what -- you can put it in my mailbox.

10 Q. Did you?

11 A. Yes.

12 Q. Okay.

13 A. Yes. We submitted a copy of this for
14 Dr. Stewart's signature, Exhibit 5 in that
15 addendum. She refused to sign, refused to
16 meet, and he witnessed it.

17 Q. This warning also references three other
18 directives: March 23rd, April 10, and April
19 26th. Have we covered each of those?

20 A. I'm just checking. Yes.

21 Q. Okay. Now, what happened next?

22 A. Because she wouldn't meet with me and sit
23 down with me and go over the warning, I wrote

1 a letter of reprimand.

2 Q. Okay. And is that Exhibit 11?

3 A. That is Exhibit 11. It was on May 1st.

4 Q. Okay.

5 A. Again she refused to meet with me to sign. I
6 think we submitted an audio version of a
7 telephone recording in the fact-finding
8 hearing where she --

9 Q. Yes.

10 A. She left a message on my voice mail telling
11 me anything I had for her -- I'm
12 paraphrasing -- anything I had for her, to
13 just put it in her mailbox.

14 Q. In other words, she would not talk with you.

15 A. No, she would not meet with me.

16 Q. Do you need to take a minute?

17 A. I'm just looking to see if -- I know it's in
18 here. I thought maybe that the court
19 reporter actually typed out what the
20 recording said.

21 Q. Okay. No. That's all right. The bottom
22 line is, your testimony, the bottom line is
23 she left you a phone message and said she

Laura A. Head, Court Reporter
(334) 286-4938 or (334) 202-4851

1 will not meet with you --

2 A. No.

3 Q. -- correct?

4 A. Correct.

5 Q. Did she?

6 A. No.

7 Q. All right. What happened next?

8 A. She wrote a letter to Dr. Stewart on May the
9 5th.

10 Q. Okay. In other words -- and that had to do
11 with her grievance, right?

12 A. Uh-huh.

13 Q. All right. Then what?

14 A. And then she wrote on May the 9th a
15 continuance letter of her grievance.

16 Q. Then what?

17 A. On May 10th she wrote an addendum to the
18 letter of her grievance.

19 Q. All right. Then what?

20 A. The same day, on the 10th, is when I wrote
21 the memo to Ms. Carr directing her that she
22 was to finish those SACS files and purge
23 those SACS files.

1 Q. All right. And that never was done, correct?

2 A. No. That's Exhibit 15.

3 Q. Were there other directives that --

4 A. Yes.

5 Q. Okay.

6 A. On -- and this one goes back to April 10th.

7 Q. All right.

8 A. I had asked her to -- she had helped

9 Dr. Stewart with his policy manuals. We have

10 two policy manuals at DYS. We have School

11 District policy manual, and we have the DYS

12 policy manual. And there's no dividers in

13 it. It's just chapter after chapter after

14 chapter of policies. And she had -- in

15 Defendant's Exhibit 9, she had developed

16 these dividers for Dr. Stewart, and I had

17 used his policy manuals because it was quick

18 reference. And I thought that's -- and since

19 she had done it for him, she's got them in

20 her computer. She can print them off and put

21 them in mine. And so I told her -- I asked

22 her, I said, Would you -- I took my policy

23 manuals to her and asked her to do the same

1 for me and put them in the files, you know,
2 make the binders for me. And she was busy
3 doing stuff. She was across the other side
4 of the building hanging Easter eggs at one
5 point on the glass. And I asked her -- had
6 to ask her twice to do those. And she would
7 bring them and put them -- after she printed
8 them off huffingly, she asked me why I needed
9 them today. And I said, I didn't need them
10 today but this is what I've asked you to do
11 today. And at this point, it's nine-
12 something, and I have not given her any
13 instructions for the day. This is the only
14 thing I had asked her to do and she's, Why
15 have you got to have it today, why have I got
16 to do it today, do you need it right now type
17 attitude. And I told her I didn't need it
18 immediately, but I did want it done that
19 day. And she brought it back to my office a
20 little bit later. She had the sheets
21 printed, but they were not put in the
22 binders. So I took it back to her and told
23 her to file them. And she said, I didn't

Laura A. Head, Court Reporter
(334) 286-4938 or (334) 202-4851

1 file them for Dr. Stewart. He put them in
2 himself. And I said, you know, I'm asking
3 you to put them in the binders, not what
4 Dr. Stewart did. I'm asking you to put them
5 in the binders. That's still the only thing
6 I've asked her to do at this point is to do
7 that for me. And she did it begrudgingly,
8 but she did it. And it was done by the
9 afternoon.

10 Q. She did do that?

11 A. She did do it but with much questioning
12 and --

13 Q. Right. Okay.

14 A. And I had to continually give her directives.

15 Q. All right. Was there -- what finally
16 happened that resulted in a recommendation?

17 A. Well, after the May 10th memo where I asked
18 her finally to finish those files, those SACS
19 files, I needed them done, and she didn't do
20 it.

21 Q. I mean, after -- what I'm asking you is after
22 the reprimand.

23 A. Reprimand.

1 Q. First you gave her a warning. Then you gave
2 her a reprimand.

3 A. Yes.

4 Q. And then finally --

5 A. I made the recommendation to Dr. Stewart to
6 release her.

7 Q. And did you tell the Hearing Officer about
8 that?

9 A. I wrote a letter to Dr. Stewart requesting
10 that she be relinquished of her duties and be
11 released.

12 Q. And what was the basis of that
13 recommendation?

14 A. Insubordination and refusal to do her job.

15 Q. Was there a final act of insubordination that
16 precipitated that?

17 A. The SACS files. I mean, it has evolved. I
18 mean, she had gotten to where she wouldn't
19 communicate with me except through my
20 mailbox. I mean, she told me on the phone,
21 Anything you have for me to do, put it in my
22 mailbox.

23 Q. And when she reached the point where she

1 would not communicate with you at all and
2 hadn't done any of the directives that you
3 had asked her to do --

4 A. She would still do what she wanted to do.

5 Q. Okay.

6 A. She would fax stuff if I put it in her
7 mailbox, you know, but she wouldn't do
8 anything that had to do with names, numbers.
9 I mean, she would fax stuff for me, but that
10 was about it. I mean, she -- and she gave
11 some documentation to that where she faxed
12 stuff to people. But that was just about all
13 she was doing for me at that point, and I
14 needed a lots more. I needed someone that
15 was willing to do their job.

16 Q. Okay. What was the date that you
17 recommended?

18 A. I think it was the 12th.

19 Q. I don't see that.

20 A. It's not in here. I think I have a copy.

21 Q. Do you have one with you?

22 A. No, I do not.

23 MR. PERRY: Can we take just a break

1 for just a minute and let me find this
2 letter? Do you have her personnel file?

3 THE COURT: For the Record, all I've
4 got is -- what we have here is an abbreviated
5 form of your personnel file. We don't have
6 everything that would be contained at the
7 department. We've got an abbreviated
8 version. That's always considered in these
9 proceedings. You're welcome to look through
10 it if you need to.

11 MS. CARR: No, I've got one from them.
12 I appreciate it.

13 THE COURT: Do you need to look at this
14 one?

15 MR. PERRY: Yes. You do have an
16 abbreviated file, don't you? Okay. That's
17 fine.

18 Q. (By Mr. Perry:) On May 16th, what happened?

19 A. There was a fact-finding hearing in regard to
20 Ms. Carr's termination.

21 Q. Okay. Was there a Hearing Officer there?

22 A. Yes.

23 Q. Who was that?

1 A. Mr. Tim Davis, the Deputy Director of the
2 Department of Youth Services.

3 Q. Okay. And that is the document that's
4 attached to my exhibit list, Number 16,
5 right?

6 A. Correct.

7 MR. PERRY: Okay. That's all. You can
8 answer Mr. Manasco's questions.

9 THE WITNESS: Okay.

10 CROSS EXAMINATION

11 BY MR. MANASCO:

12 Q. Good afternoon. Okay. Ms. Smitherman, you
13 testified earlier that you had -- Ms. Ruby
14 Carr had worked with you since September of
15 2004?

16 A. Sure.

17 Q. Okay. And do you know the circumstances of
18 how she came to be working with you?

19 MR. PERRY: I'm going to object.
20 What's the relevance?

21 THE COURT: Well, I mean, you asked
22 about background. I'm going to allow him to
23 go into it.

DEPARTMENT OF YOUTH SERVICES

JOHN STEWART, Ed.D., Superintendent
School District 210

SCHOOL DISTRICT
Post Office Box 66
Mt. Meigs, Alabama 36057
Telephone (334) 215-3850
Fax Number (334) 215-3011

J. WALTER WOOD, JR.
Executive Director

Memorandum

To: Tracy Smitherman
Coordinator

From: Ruby H. Carr, YSA *RHC*

Date: January 23, 2006

Re: Property Inventory
DYS School District 210

Ms. Smitherman,

Several months ago you informed me that I could transfer School District Property Inventory Register to Yolanda Kelley, Technology Coordinator. Then and now, I do not feel that I am in a position to transfer the Property Inventory to Mrs. Kelley.

Due to circumstances that are beyond my individual control I feel that it is necessary as of this day January 23, 2006 that I relinquish any and all responsibility of maintaining the Property Inventory Register for DYS School District 210.

I am submitting to you copies of the Property Inventory Register & documentation for (Central Office, Autauga, Chalkville-Sequoyah, Thomasville, Vacca-McNeel, & L. B. Wallace) to date. Also, I am removing the (2) Gateway Laptop Computers from my office.

I do not feel that it is necessary that we meet to discuss anything concerning DYS School District 210 Property Inventory since everything is self explanatory.

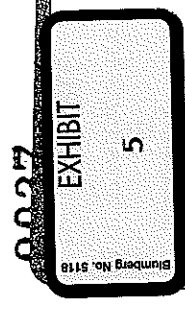
As always, I will continue to work and give this organization and School District a 110%.

Cc: Dr. John Stewart, Superintendent
Yolanda Kelley, Technology Coordinator
Wendell Ross, Property Manager
File

rhc

1/23/06

*Would like to be
put in personnel
file along w/inventory
Carr*



DYS School District Property Control Register
Central Office

Property Control #	Date	State Property # (s)	Item Description (Serial #'s)	From	To	Trans./I&I/Radio	Instr. #
83-55269	6/13/2005	DYS-003177	Computer - 1R1WN71	T. Smitherman	R.Carr		
Central Office			Monitor - CN0T61167161855ABAYS	T. Smitherman	R.Carr		
83-13863	8/9/2005	DYS-003148	Gateway M460E Laptop Computer	T. Smitherman	Y.Kelley		
Central Office			Ser#: 0035618863				
83-13864	7/14/2005	DYS-003149	Gateway M460E Laptop Computer	T. Smitherman	Q. Barker		
Central Office			Ser#: 0035618864				
83-13865	9/20/2005	DYS-003150	Gateway M460E Laptop Computer	T. Smitherman	T. Smitherman		
Central Office			Ser#: 0035618865	Transferred to J. Shoemaker (Wallace School) on 10/11/05			
83-13809	N/A	DYS-003113	Gateway M460E Laptop Computer	School District	NOT ISSUED		
Chalkville School			Ser#: 0035618809				
83-13811	N/A	DYS-003115	Gateway M460E Laptop Computer	School District	NOT ISSUED		
Vacca-McNeel			Ser#: 0035618811				
83-55249	9/15/2005	DYS-003258	Gateway Server	T. Smitherman	Server Room		
Bldg. 9 Support Operation			Ser#: 0035823263				
83-55250	9/15/2005	DYS-003259	Gateway Server	T. Smitherman	Server Room		
Bldg. 9 Support Operation			Ser#: 0035823264				
83-55274	12/28/2005		Dell 3100CN Color Laser Printer	T. Smitherman	R. Carr		
Central Office			Ser#: CN-OP4869-71971-58C-A240				
83-57754	1/19/2006		Dell 3100CN Color Laser Printer	J. Stewart	Y.Kelley		
Central Office			Ser#: HK0F5548-71974-59N-L011				

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1/23/2006

[illegible]

DYS School District Property Control Register
Chalkville

Property Control #	Date	State Property # (s)	Item Description (Serial #'s)	From	To	Trans./I&I/Radio	Instr. #
83-55264	6/10/2005	DYS-003175	Computer - 801ZZN71	R. Carr	W. Jefferies		
Chalkville	6/10/2005		Monitor - CN0T61167161855ABA6H	R. Carr	W. Jefferies		
83-55262	6/10/2005	DYS-003176	Computer - 501ZN71	T. Smitherman	J. Wood		
Chalkville	6/10/2005		Monitor - CN0T61167161855ABA4Q	T. Smitherman	J. Wood		
83-55271	6/15/2005	DYS-003183	Delonghi Air Conditioner	T. Smitherman	Chery Bufford		
Chalkville School			Ser#: 40512 S01P016129		Server Room		
83-13793	7/18/2005	DYS-003097	Gateway M460E Laptop Computer	T. Smitherman	C. Bufford		
Chalkville			Ser#: 0035618793				
83-13794	7/18/2005	DYS-003098	Gateway M460E Laptop Computer	T. Smitherman	B. Clark		
Chalkville			Ser#: 0035618794				
83-13795	7/18/2005	DYS-003099	Gateway M460E Laptop Computer	T. Smitherman	J. Daniels		
Chalkville			Ser#: 0035618795				
83-13796	7/18/2005	DYS-003100	Gateway M460E Laptop Computer	T. Smitherman	J. Dixon		
Chalkville			Ser#: 0035618796				
83-13797	7/18/2005	DYS-003101	Gateway M460E Laptop Computer	T. Smitherman	A. Ethridge		
Chalkville			Ser#: 0035618797				
83-13798	7/18/2005	DYS-003102	Gateway M460E Laptop Computer	T. Smitherman	R. Hunter		
Chalkville			Ser#: 0035618798				
83-13799	7/18/2005	DYS-003103	Gateway M460E Laptop Computer	T. Smitherman	W. Jefferies		
Chalkville			Ser#: 0035618799				
83-13800	7/18/2005	DYS-003104	Gateway M460E Laptop Computer	T. Smitherman	G. Lawrence		
Chalkville			Ser#: 0035618800				

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DYS School District Property Control Register
Chalkville

Property Control #	Date	State Property # (s)	Item Description (Serial #'s)	From	To	Trans./I&I/Radio	Instr. #
83-13801	7/18/2005	DYS-003105	Gateway M460E Laptop Computer	T. Smitherman	E. Myles		
Chalkville			Ser#: 0035618801				
83-13802	7/18/2005	DYS-003106	Gateway M460E Laptop Computer	T. Smitherman	M. Patterson		
Chalkville			Ser#: 0035618802				
83-13803	7/18/2005	DYS-003107	Gateway M460E Laptop Computer	T. Smitherman	M. Rencher		
Chalkville			Ser#: 0035618803				
83-13804	7/18/2005	DYS-003108	Gateway M460E Laptop Computer	T. Smitherman	R. Seales		
Chalkville			Ser#: 0035618804				
83-13805	7/18/2005	DYS-003109	Gateway M460E Laptop Computer	T. Smitherman	C. Seals		
Chalkville			Ser#: 0035618805				
83-13806	7/18/2005	DYS-003110	Gateway M460E Laptop Computer	T. Smitherman	C. Stanton		
Chalkville			Ser#: 0035618806				
83-13807	7/18/2005	DYS-003111	Gateway M460E Laptop Computer	T. Smitherman	N. Watts		
Chalkville			Ser#: 0035618807				
83-13808	9/19/2005	DYS-003112	Gateway M460E Laptop Computer	T. Smitherman	T. Boggs		
Chalkville			Ser#: 0035618808				

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DYS School District Property Control Register
Vacca-McNeel

Property Control #	Date	State Property # (s)	Item Description (Serial #'s)	From	To	Trans./I&I/Radio	Instr. #
83-55265	6/10/2005	DYS-003174	Computer - 311ZN71	R. Carr	C. Turner		
Vacca-McNeel	6/10/2005		Monitor - CN0T61167161855ABAGC	R. Carr	C. Turner		
83-55268	6/13/2005	DYS-003179	Computer - H11ZN71	T. Smitherman	P. Bowen		
Vacca-McNeel	6/13/2005		Monitor - CN0T61167161855ABC7G	T. Smitherman	P. Bowen		
83-56272	6/15/2005	DYS-003184	Delonghi Air Conditioner	T. Smitherman	Roger Wilkinson		
Vacca-McNeel			Ser#: 40512 S01P016130		Server Room		
83-13810	7/15/2005	DYS-003114	Gateway M460E Laptop Computer	T. Smitherman	L. Browning		
Vacca-McNeel			Ser#: 0035618810				
83-13812	7/15/2005	DYS-003116	Gateway M460E Laptop Computer	T. Smitherman	M. English		
Vacca-McNeel			Ser#: 0035618812				
83-13813	7/15/2005	DYS-003117	Gateway M460E Laptop Computer	T. Smitherman	G. Golden		
Vacca-McNeel			Ser#: 0035618813				
83-13814	7/15/2005	DYS-003118	Gateway M460E Laptop Computer	T. Smitherman	C. Goodgame		
Vacca-McNeel			Ser#: 0035618814				
83-13815	7/15/2005	DYS-003119	Gateway M460E Laptop Computer	T. Smitherman	R. Harrell		
Vacca-McNeel			Ser#: 0035618815				
83-13816	7/15/2005	DYS-003120	Gateway M460E Laptop Computer	T. Smitherman	R. Holloway		
Vacca-McNeel			Ser#: 0035618816				
83-13817	7/15/2005	DYS-003121	Gateway M460E Laptop Computer	T. Smitherman	A. Jones		
Vacca-McNeel			Ser#: 0035618817				
83-13818	7/15/2005	DYS-003122	Gateway M460E Laptop Computer	T. Smitherman	W. Jones		
Vacca-McNeel			Ser#: 0035618818				
83-13819	7/15/2005	DYS-003123	Gateway M460E Laptop Computer	T. Smitherman	L. McQueen		
Vacca-McNeel			Ser#: 0035618819				

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DYS School District Property Control Register
Vacca-McNeel

Property Control #	Date	State Property # (s)	Item Description (Serial #'s)	From	To	Trans./I&I/Radio	Instr. #
83-13820	7/15/2005	DYS-003124	Gateway M460E Laptop Computer	T. Smitherman	S. Perry		
Vacca-McNeel			Ser#: 0035618820				
83-13821	7/15/2005	DYS-003125	Gateway M460E Laptop Computer	T. Smitherman	M. Ravizee		
Vacca-McNeel			Ser#: 0035618821				
83-13822	7/15/2005	DYS-003126	Gateway M460E Laptop Computer	T. Smitherman	M. Sneed		
Vacca-McNeel			Ser#: 0035618822				
83-13823	7/15/2005	DYS-003127	Gateway M460E Laptop Computer	T. Smitherman	C. Turner		
Vacca-McNeel			Ser#: 0035618823				
83-13824	7/15/2005	DYS-003128	Gateway M460E Laptop Computer	T. Smitherman	G. Tyson		
Vacca-McNeel			Ser#: 0035618824				
83-13825	7/15/2005	DYS-003129	Gateway M460E Laptop Computer	T. Smitherman	P. Ward		
Vacca-McNeel			Ser#: 0035618825				
83-13826	7/15/2005	DYS-003130	Gateway M460E Laptop Computer	T. Smitherman	C. Wilburn		
Vacca-McNeel			Ser#: 0035618826				
83-13828	8/9/2005	DYS-003132	Gateway M460E Laptop Computer	T. Smitherman	A. Tigner		
Vacca-McNeel			Ser#: 0035618828				
83-13829	9/19/2005	DYS-003133	Gateway M460E Laptop Computer	T. Smitherman	E. Wright		
Vacca-McNeel			Ser#: 0035618829				
83-13827	9/19/2005	DYS-003131	Gateway M460E Laptop Computer	School District	S. Sanders		
Vacca-McNeel			Ser#: 0035618827				

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DYS School District Property Control Register
L. B. Wallace

Property Control #	Date	State Property # (s)	Item Description (Serial #'s)	From	To	Trans./I&I/Radio	Instr. #
83-55260	6/10/2005	DYS-003172	Computer - G01ZN71	R. Carr	P. Thompson		
Wallace School	6/10/2005		Monitor - CN0T61167161855ABAGA	R. Carr	P. Thompson		
83-55258	6/10/2005	DYS-003173	Computer - BZ0ZN71	R. Carr	G. Dunn		
Holloway Hall	6/10/2005		Monitor - CN0T61167161855ABA4P	R. Carr	G. Dunn		
83-55273	6/15/2005	DYS-003185	Delonghi Air Conditioner	T. Smitherman	C. Gavin		
Wallace School			Ser#. 40512 S01P016117		Server Room		
83-48509	7/1/2005	DYS-003180	Ridgid Pipe Treader M#300-T2	C. Gavin	J. Fox		
Wallace School			Ser# ED 80581 1102		Voc. Electrical		
83-13830	7/14/2005	DYS-003134	Gateway M460E Laptop Computer	T. Smitherman	E. Capelton		
Wallace School			Ser#: 0035618830				
83-13831	7/14/2005	DYS-003135	Gateway M460E Laptop Computer	T. Smitherman	J. Clark		
Wallace School			Ser#: 0035618831				
83-13832	7/14/2005	DYS-003136	Gateway M460E Laptop Computer	T. Smitherman	S. Crenshaw		
Wallace School			Ser#: 0035618832				
83-13833	7/14/2005	DYS-003137	Gateway M460E Laptop Computer	T. Smitherman	S. Crowell		
Wallace School			Ser#: 0035618833				
83-13834	7/14/2005	DYS-003138	Gateway M460E Laptop Computer	T. Smitherman	L. Crymés		
Wallace School			Ser#: 0035618834				
83-13835	7/14/2005	DYS-003139	Gateway M460E Laptop Computer	T. Smitherman	G. Dunn		
Wallace School			Ser#: 0035618835				
83-13836	7/14/2005	DYS-003140	Gateway M460E Laptop Computer	T. Smitherman	J. Ellis		
Wallace School			Ser#: 0035618836				

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1/23/2006

DYS School District Property Control Register
L. B. Wallace

Property Control #	Date	State Property # (s)	Item Description (Serial #'s)	From	To	Trans./I&I/Radio	Instr. #
83-13837	7/14/2005	DYS-003141	Gateway M460E Laptop Computer	T. Smitherman	J. Fox	Retired 12/16/05	
Wallace School			Ser#: 0035618837	Computer was returned to Central Office 1/11/06			
83-13838	7/14/2005	DYS-003142	Gateway M460E Laptop Computer	T. Smitherman	A. Freeman	Retired 12/16/05	
Wallace School			Ser#: 0035618838	Computer was returned to Central Office 1/11/06			
83-13839	7/15/2005	DYS-003143	Gateway M460E Laptop Computer	T. Smitherman	C. Gavin		
Wallace School			Ser#: 0035618839				
83-13840	7/18/2005	DYS-003144	Gateway M460E Laptop Computer	T. Smitherman	G. Graves		
Wallace School			Ser#: 0035618840				
83-13841	7/14/2005	DYS-003145	Gateway M460E Laptop Computer	T. Smitherman	J. Green		
Wallace School			Ser#: 0035618841				
83-13842	7/14/2005	DYS-003146	Gateway M460E Laptop Computer	T. Smitherman	J. Hurst		
Wallace School			Ser#: 0035618842				
83-13843	7/14/2005	DYS-003147	Gateway M460E Laptop Computer	T. Smitherman	R. Jemison		
Wallace School			Ser#: 0035618843				
83-13844	7/14/2005	*DYS-003152	Gateway M460E Laptop Computer	T. Smitherman	K. John		
Wallace School			Ser#: 0035618844				
83-13845	7/14/2005	DYS-003153	Gateway M460E Laptop Computer	T. Smitherman	I. Kelly		
Wallace School			Ser#: 0035618845				
83-13846	7/14/2005	DYS-003154	Gateway M460E Laptop Computer	T. Smitherman	J. Killough		
Wallace School			Ser#: 0035618846				
83-13848	7/14/2005	DYS-003155	Gateway M460E Laptop Computer	T. Smitherman	D. Laughlin		
Wallace School			Ser#: 0035618848				

0046

1/23/2006

DYS School District Property Control Register
L. B. Wallace

Property Control #	Date	State Property # (s)	Item Description (Serial #'s)	From	To	Trans./I&I/Radio	Instr. #
83-13847	7/14/2005	DYS-003156	Gateway M460E Laptop Computer	T. Smitherman	D. Ledyard	Retired 12/6/05	
Wallace School			Ser#: 0035618847		IIS Contractor Jim Mason is using this computer		
83-13849	7/14/2005	DYS-003151	Gateway M460E Laptop Computer	T. Smitherman	H. Meeks		
Wallace School			Ser#: 0035618849				
83-13850	7/14/2005	DYS-003157	Gateway M460E Laptop Computer	T. Smitherman	J. Owens		
Wallace School			Ser#: 0035618850				
83-13851	7/14/2005	DYS-003158	Gateway M460E Laptop Computer	T. Smitherman	K. Ross		
Wallace School			Ser#: 0035618851				
83-13852	7/14/2005	DYS-003162	Gateway M460E Laptop Computer	T. Smitherman	E. Sanders		
Wallace School			Ser#: 0035618852				
83-13853	7/15/2005	DYS-003159	Gateway M460E Laptop Computer	T. Smitherman	M. Shivers		
Wallace School			Ser#: 0035618853				
83-13854	7/14/2005	DYS-003160	Gateway M460E Laptop Computer	T. Smitherman	J. Shoemaker	Deleted Due to Stolen	10/10/2005
Wallace School			Ser#: 0035618854			SD1 #60212	11/9/2005
83-13855	7/14/2005	DYS-003161	Gateway M460E Laptop Computer	T. Smitherman	L. Smith		
Wallace School			Ser#: 0035618855				
83-13856	7/14/2005	DYS-003163	Gateway M460E Laptop Computer	T. Smitherman	D. Steely		
Wallace School			Ser#: 0035618856				
83-13857	7/14/2005	DYS-003164	Gateway M460E Laptop Computer	T. Smitherman	D. Thomas		
Wallace School			Ser#: 0035618857				
83-13858	7/14/2005	DYS003165	Gateway M460E Laptop Computer	T. Smitherman	P. Thompson		
Wallace School			Ser#: 0035618858				

1/23/2006

0047

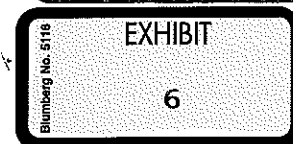
DYS School District Property Control Register
L. B. Wallace

Property Control #	Date	State Property # (s)	Item Description (Serial #'s)	From	To	Trans./I&I/Radio	Instr. #
83-13859	7/14/2005	DYS-003166	Gateway M460E Laptop Computer	T. Smitherman	R. Walker		
Wallace School			Ser#: 0035618859				
83-13860	7/14/2005	DYS-003167	Gateway M460E Laptop Computer	T. Smitherman	S. Washington		
Wallace School			Ser#: 0035618860				
83-13861	7/14/2005	DYS-003168	Gateway M460E Laptop Computer	T. Smitherman	L. Williams		
Wallace School			Ser#: 0035618861				
83-13862	7/14/2005	DYS-003169	Gateway M460E Laptop Computer	T. Smitherman	M. Womack		
Wallace School			Ser#: 0035618862				
83-55266	7/11/2005	DYS-003178	Computer - 9B78E301507	R. Carr	D. Steely		
Wallace School			Monitor - CN0Y4413728725449ETL	R. Carr	D. Steely		
83-48501	7/21/2005	DYS-003181	Dell 3100cn Color Laser Printer	C. Gavin	R. Walker		
Wallace School			Ser#: 0PA4843-71971-515-B050				
83-48502	7/21/2005	DYS-003182	Dell 3100cn Color Laser Printer	C. Gavin	R. Walker		
Wallace School			Ser#: 0PA4843-71971-515-B237				
83-13865	10/11/2005	DYS-003150	Gateway M460E Laptop Computer	Y. Kelley	J. Shoemaker		
Wallace School			Ser#: 0035618865	Transferred from T. Smitherman(Sch. District) to J. Shoemaker 10/11/05			
83-55275	1/9/2006		Dell 3100CN Color Laser Printer	T. Smitherman	P. Thompson		
Wallace School			Ser#: CN-OP4843-71971-58C-A243				

1/23/2006

0048

Exhibit 1

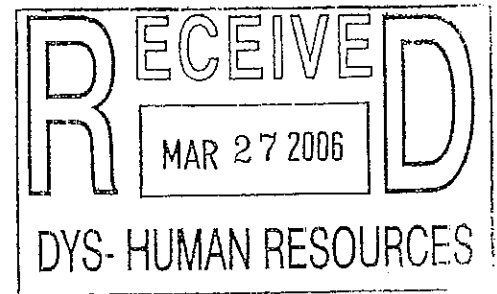


~~old training
files that
had been
already used
for recent~~

Shread

Tracy,
I need you to
shread since this
is teachers info.

Thanks
Ruby
- 3/23/2006



Memorandum

DATE: March 23, 2006
 TO: Tracy Smitherman, Coordinator
 FROM: Ruby H. Carr, YSAide *Ruby Carr*
 RE: Gateway Laptop Computer

Per phone conversation with you on 3/23/2006 in reference to the Gateway Laptop Computer you issue to Joniece Hamilton-Wood, ASA I for Chalkville-Sequoyah school on February 2, 2006. I spoke briefly with Mrs. Yolanda Kelley, Technology Coordinator concerning the issuance of the Laptop Computer, but Ms. Kelley informed me that she did not know anything about this.

Please help me to understand why Mrs. Wood was issued a Gateway Laptop Computer and no other individual serving as a Secretary for School District 210 was offered or received one. As your personal secretary you often say, I was not offered nor issued a Gateway Laptop Computer.

In July, 2005 I ask you would the Secretaries receive a Gateway Laptop Computer and you informed me that only the teachers were to receive a Laptop. *The Gateway Laptop Computer you issued Mrs. Wood belongs to L. B. Wallace School (Al Freeman-retired 12/16/05) according to the property inventory. (See Wallace School Property Inventory Register 1/23/2006)*

I feel that due to the lack of communication that has existed since August 23, 2005 can cause a problem such as this within any professional or non-professional work environment.

I feel that all individuals that are serving as a Secretary for School District 210 should have been offered or received a new Gateway Laptop Computer on 2/2/2006. As I informed you I would prefer a Dell Laptop over Gateway.

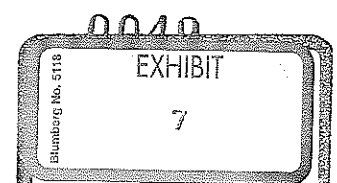
There have been times that we discussed being *consistent, firm, and fair* within the workplace but do the (3) exist at all times with each individual despite, race, creed, gender, color, professional, or non-professional.

Please do what is right to correct this problem and if I can be of any assistance please do not hesitate to ask me. As always, I will continue to give 110% to School District 210 and the Department of Youth Services.

Just For Information: The Gateway Laptop Computer that was issued to Mr. Charles Broaden at L.B. Wallace on 3/20/2006 serial #0035618809, property #83-13809 & DYS-003113 belongs to Chalkville-Sequoyah. *(See School District Property Inventory Register 1/23/2006)*

Cc: Dr. John Stewart, Superintendent
 Wendell Ross, Property Manager

Yolanda Kelley, Technology
 File





JOHN STEWART, Ed.D., Superintendent
School District 210

State of Alabama
Department of Youth Services
School District
Post Office Box 66
Mt. Meigs, Alabama 36057
Telephone (334) 215-3859
Fax Number (334) 215-3011



J. WALTER WOOD, JR.
Executive Director

Placed in
Handmail
2/3/06

I acknowledge receipt of and responsibility (Code of Alabama 1975, Section 36-16-8)
for the items described below, and will return them by the date indicated.

Issued To: Signature [Signature] 1-80-8578
Duty Phone

Issued By: Signature [Signature]

Issued To: Printed Name & Position [Signature] 2/2/06
Date Issued

Return Date

83-13838
Property Inventory Number

Description of Item

Gateway M41E laptop computer and
carrying case
Serial number 00315618838

If this is a permanent change please send a copy of this receipt to the Department of
Youth Services Property Manager. Every six months this form must be resigned if
change is temporary.

0050


Memo

To: Tracy Smitherman
Federal Programs & Curriculum Coordinator

From: Ruby H. Carr, Youth Service Aide

Date: April 7, 2006

Re: Letter of Grievance

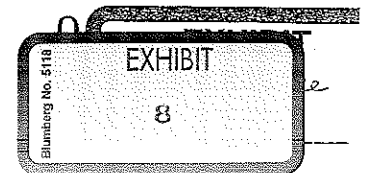


Ms. Smitherman, I am in receipt of your memorandum dated March 31, 2006 received by me on April 6, 2006 at approximately 4:10 p.m.

Based upon your memorandum dated 3/31/2006 and your allegation of my violation of ethics I submit to you this Letter of Grievance. I was hoping to meet with you today but I understand that you are out of the office. I would like to meet with you on Monday, April 10, 2006 to discuss the following concerns of unfair treatment of staff, lack of communication and your allegation of my violation of ethics.

I feel that I have been unfairly treated and have tolerated and witnessed a lot of unfair situations and circumstances here in School District 210 since September 22, 2004.

- I tolerated for several months working in the storage room with (60+) boxes surrounding the table not a desk that I use.
- I tolerated being told by you "Blatantly and racially" that I could not help Mrs. Queen Barker with STI/SETS on August 23, 2005.
- I tolerated being denied training for STI at L. B. Wallace School on August 24, & 25, 2005.
- I tolerated your giving the new Technology Coordinator, Mrs. Yolanda Kelley, a brand new telephone for her office, and you told me that I would not be getting a new phone.
- I tolerate not having access to Outlook Express because you informed me that it cost too much for me to have that email account but everyone else have access to Outlook Express.
- I tolerate Mrs. Shelia Turner, ASA III having a new telephone with Caller ID, Speaker Phone, Conference Call, etc.
- I tolerated being asked by you to do Mrs. Shelia Turner, ASA III work (2/15/2006) while Ms. Turner watch a movie on her DVD at her desk. You exited the building for a meeting.
- I tolerated Mrs. Shelia Turner slamming my office door on Wednesday, April 5, 2006, because I was willing to assist Dr. SoJuan Crenshaw with information concerning a telephone and file cabinet.
- I tolerate doing the Federal Programs & Curriculum Coordinator work and not receiving anymore benefits or pay.



- o I tolerate watching you blatantly and racially discriminate against other individuals in DYS School District 210.
- o I resent the office confusion that often occurs because I am willing to assist and communicate with other employees.
- o I resent not being offered or issued a Gateway Laptop Computer on February 2, 2006
- o I resent being retaliated against, unfairly treated and alleged of violation of ethics because I made you aware that it was unfair for a Secretary to be issued a Gateway Laptop and no other individual serving as a Secretary for DYS School District 210 was offered or issued one.
- o I resent being accused of violation of ethics: In order for me to file the document, I had to look and read to see where to file that particular document. I do not feel that I have violated any ethics concerning the Inventory Property Form.

According to you in July 2005, I was informed that only the teachers would receive the Gateway Laptop Computer due to Federal Funds that was allocated specifically in the grant for the teachers. Secretaries would not receive a Gateway Laptop Computer.

I look forward to meeting with you and I hope that we can resolve the above concerns of unfair treatment to staff, lack of communication, and your allegation of my violation of ethics.

cc:

Debra Spann

Tim Davis

Marcia Calendar

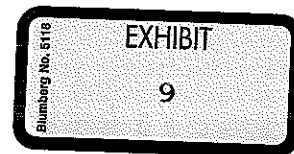
J. Walter Wood

File

0054

ADMINISTRATIVE FACT-FINDING HEARING IN RE: RUBY CARR

May 16, 2006



Reagan Reporters, LLC
Phone: 334.262.7556
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ADMINISTRATIVE FACT-FINDING HEARING IN RE: RUBY CARR - 5/16/2006

STATE OF ALABAMA
DEPARTMENT OF YOUTH SERVICES

ADMINISTRATIVE FACT-FINDING HEARING

IN RE: RUBY CARR

The following proceedings were taken before the Alabama Department of Youth Services in the above-referenced matter on May 16th, 2006, commencing at approximately 10:00 a.m. in the Central Office, Mt. Meigs Complex, Department of Youth Services, Montgomery, Alabama, before Karen Reagan Drinkard, CSR, Reporter and Notary Public in and for the State of Alabama at Large.

1

3

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2

4

BEFORE:

TIM DAVIS, Hearing Officer,
Deputy Director of Programs

APPEARANCES

FOR THE ALABAMA DEPARTMENT OF YOUTH SERVICES:

DUDLEY PERRY, ESQUIRE
TRACY SMITHERMAN

FOR THE COMPLAINANT:

IANA JACKSON SHEALEY
Field Staff Representative
Alabama State Employees
Association

ADDITIONAL WITNESS:

DR. JOHN STEWART
State Board of Education

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12	EX-5 Written Reprimand, dated	114
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14	handwritten note	
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16	4/27/2006	

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18	3/23/2006	
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20	5/1/2006, without	
21	handwritten note	
22	EX-9 Document Containing	184
23	Several Pages of Tables,	
	with Handwritten Notes	

ADMINISTRATIVE FACT-FINDING HEARING IN RE: RUBY CARR - 5/16/2006

9

11

any objections.

Now, disciplinary action has been recommended based on the following information:

It is alleged that Ms. Carr has violated rules of State Personnel Board -- and this will be in parenthesis -- (670-X-19-.01)(e), this is failure to perform job properly; and/or violation of rules of State Personnel Board, in parenthesis again, (670-X-19-.01)(1g), this is disruptive conduct of any sort and/or violation of the rules of State Personnel Board; (670-X-19-.01)(2b), insubordination. Okay.

supporting documentation. And again, Ms. Carr and Ms. Shealey, you will also be afforded to do the same, okay? Are you ready?
MS. SMITHERMAN: I'm ready
HEARING OFFICER: Okay.
Please begin.
MS. SMITHERMAN: Okay
Ms. Carr has developed a pattern of when she's given a directive, she doesn't want to do something, she becomes insubordinate and refuses to do whatever the directive is. She's exhibited this not only in writing, but also verbally. She has become so argumentative in her refusals that it's

10

12

And that on or about March 23rd, 2006, you allegedly refused to perform duties assigned to you by your supervisor in writing. Again, on or about April 10th, 2006, and April 26th, 2006, and April 27th, 2006, and May 10th, 2006, you allegedly refused to perform these same functions when verbally instructed by your supervisor. Now, based on these charges, it's the recommendation that a hearing be held to determine whether disciplinary action is warranted. Okay?

Now, Ms. Smitherman, you may present any witnesses and/or

impossible to use the progressive discipline to work through her issues and concerns. She's yelled; she's pointed her finger; she's slammed the door; she's hollered out in the name of Jesus to remove demons from our office; and she's refused to talk to me. Her behaviors range from insubordination and aggressive to frightening and bizarre. At this point, I'm not only fearful for myself, but also for other staff.

To demonstrate, I'm going to describe her behaviors and performance issues over the past nine months. I've got my

<p>13</p> <p>1 notes, so I can go</p> <p>2 through my documents</p> <p>3 properly.</p> <p>4 HEARING OFFICER: Okay. No</p> <p>5 problem.</p> <p>6 MS SMITHERMAN: On</p> <p>7 August 24th, 2005, during</p> <p>8 her performance appraisal</p> <p>9 conference, I notified</p> <p>10 Ms. Carr that I was --</p> <p>11 HEARING OFFICER: Okay. Let's</p> <p>12 stop here.</p> <p>13 MS SMITHERMAN: Okay.</p> <p>14 HEARING OFFICER: I want to</p> <p>15 stay specifically with</p> <p>16 the charges she's charged</p> <p>17 with currently, okay?</p> <p>18 MS. SMITHERMAN: Okay.</p> <p>19 HEARING OFFICER: Now,</p> <p>20 Mr. Wood may review any</p> <p>21 information contained</p> <p>22 about her work</p> <p>23 performance prior to</p>	<p>15</p> <p>1 MR. PERRY: April 10th, 26th,</p> <p>2 27th, and May 10th. That</p> <p>3 was the last.</p> <p>4 MS. SHEALEY: Will they be</p> <p>5 entered into evidence?</p> <p>6 HEARING OFFICER: If that's</p> <p>7 what she's attempting to</p> <p>8 do.</p> <p>9 MS. SHEALEY: Which exhibit</p> <p>10 would it be?</p> <p>11 HEARING OFFICER: Well, you'll</p> <p>12 have a copy of this, by</p> <p>13 the way. They'll be</p> <p>14 numbered.</p> <p>15 MS. SHEALEY: Yes, sir.</p> <p>16 HEARING OFFICER: We'll</p> <p>17 enumerate them, but do</p> <p>18 you have a copy of this?</p> <p>19 MS. SHEALEY: Yes, sir.</p> <p>20 HEARING OFFICER: Okay.</p> <p>21 Ms. Smitherman, would it</p> <p>22 assist you if you had a</p> <p>23 copy of this?</p>
<p>14</p> <p>1 these charges, okay.</p> <p>2 That's his decision. But</p> <p>3 for our hearing purposes,</p> <p>4 I want to deal</p> <p>5 specifically with these</p> <p>6 charges as outlined in</p> <p>7 the written</p> <p>8 correspondence to her.</p> <p>9 MS. SMITHERMAN: So you only</p> <p>10 want to only hear those</p> <p>11 dates?</p> <p>12 HEARING OFFICER: Exactly.</p> <p>13 Okay?</p> <p>14 MS. SMITHERMAN: And what were</p> <p>15 those dates?</p> <p>16 HEARING OFFICER: All right.</p> <p>17 MR. PERRY: March 23rd --</p> <p>18 HEARING OFFICER: Do you have</p> <p>19 a copy of his letter, by</p> <p>20 the way?</p> <p>21 MS. SMITHERMAN: Not with me.</p> <p>22 No, I don't have a copy</p> <p>23 of that one. March 23rd?</p>	<p>16</p> <p>1 MS. SMITHERMAN: No, sir.</p> <p>2 That's fine.</p> <p>3 HEARING OFFICER: Okay.</p> <p>4 MS. SMITHERMAN: I've got the</p> <p>5 dates.</p> <p>6 HEARING OFFICER: All right.</p> <p>7 MS. SMITHERMAN: I'm prepared.</p> <p>8 HEARING OFFICER: Okay.</p> <p>9 MS. SMITHERMAN: Okay. On</p> <p>10 March --</p> <p>11 HEARING OFFICER: Proceed.</p> <p>12 MS. SMITHERMAN: Yes, sir. On</p> <p>13 March 23rd, while I was</p> <p>14 out of the office, I had</p> <p>15 asked Ms. Carr to take</p> <p>16 care of some filing,</p> <p>17 shredding, et cetera.</p> <p>18 This is a post-it with</p> <p>19 her response to one of</p> <p>20 the tasks (indicating)</p> <p>21 At no time before had</p> <p>22 there been an issue of</p> <p>23 having her contact --</p>

(Pages 13 to 16)

17

19

having contact with
personal information.
She has shredded files
and organized documents
with personal information
on teachers, but out of
the blue, she decided
that she did not want to
have contact with
personal information. So
this is the post-it that
I'm giving to you.

MS. SHEALEY: Is this a second
exhibit?

HEARING OFFICER: No. It --
it's not even the first
one.

MS. SHEALEY: Okay.

HEARING OFFICER: When we do
log them in as exhibits,
I'll be very clear, and
they will be marked as
exhibits.

activities or I'm going
to be out of town and
she's working on them,
I'll put post-it notes on
some of them. These were
documents I needed
shredded, so I just put
that "shred" on there.

HEARING OFFICER: Okay.

MS. SMITHERMAN: It was
returned back to me, the
items still attached.

But that was her response
to me.

HEARING OFFICER: This?

MS. SMITHERMAN: Yes. Her
writing right there. All
I said was to shred it.

HEARING OFFICER: Okay. And
her sticky note says,
Tracy, I need you to
shred it since this is
teachers' info.

18

20

MS. SHEALEY: Yes, sir.

MS. SMITHERMAN: Do I need to
give you that right now?

MR. PERRY: Let them review
it.

MS. SMITHERMAN: Okay.

HEARING OFFICER: You can let
us review it, and then
once you -- we do that,
if you want to enter it
as an exhibit, then we'll
do it. Okay?

MS. SHEALEY: Okay.

HEARING OFFICER: All right.

Now, this you say is a
post-it note?

MS. SMITHERMAN: Uh-huh. What
I do is when I -- I have
a thing on my desk for
files --

HEARING OFFICER: Uh-huh.

MS. SMITHERMAN: -- to be
filed. When there's

MS. SMITHERMAN: Correct.

HEARING OFFICER: And you had
instructed her to shred
it?

MS. SMITHERMAN: Correct.

HEARING OFFICER: Okay. Old
training files that have
been already used
for recert. Is that --
whose handwriting --

THE REPORTER: Excuse me. Old
training files that had
already been used for --

HEARING OFFICER: That have
been already used for --
looks like --

MS. SMITHERMAN:
Certification?

HEARING OFFICER: Yeah.
Recert.

MS. SMITHERMAN: Recert?
Okay.

HEARING OFFICER: Looks like

<p style="text-align: right;">21</p> <p>1 recertification. Okay.</p> <p>2 And that's your</p> <p>3 handwriting?</p> <p>4 MS. SMITHERMAN: Yes.</p> <p>5 HEARING OFFICER: Okay. And</p> <p>6 you have a copy of this.</p> <p>7 MS. SHEALEY: We do. We have</p> <p>8 a copy that she presented</p> <p>9 us.</p> <p>10 HEARING OFFICER: Okay.</p> <p>11 MS. SHEALEY: And we have a</p> <p>12 copy that we'll enter</p> <p>13 into evidence also.</p> <p>14 HEARING OFFICER: Okay.</p> <p>15 That's fine. All right.</p> <p>16 But you've had a chance</p> <p>17 to review it, okay</p> <p>18 Now, Ms. Smitherman,</p> <p>19 is it your intention to</p> <p>20 enter this as Exhibit</p> <p>21 Number 1?</p> <p>22 MS. SMITHERMAN: Yes.</p> <p>23 HEARING OFFICER: Okay. All</p>	<p style="text-align: right;">23</p> <p>1 MS. SHEALEY: Thank you, sir.</p> <p>2 HEARING OFFICER: And you will</p> <p>3 also have a copy of what</p> <p>4 she's entering for your</p> <p>5 immediate review here.</p> <p>6 MS. SHEALEY: Yes, sir. Thank</p> <p>7 you.</p> <p>8 HEARING OFFICER: Okay. All</p> <p>9 right Ms. Smitherman,</p> <p>10 please proceed.</p> <p>11 MS. SMITHERMAN: Okay. Can I</p> <p>12 ask my counsel something?</p> <p>13 HEARING OFFICER: Sure.</p> <p>14 MS. SMITHERMAN: I'm not</p> <p>15 clear. Do I keep going</p> <p>16 through my consecutive</p> <p>17 dates?</p> <p>18 MR. PERRY: Ask him. Explain</p> <p>19 to him what you've got.</p> <p>20 MS. SMITHERMAN: Okay.</p> <p>21 MR. PERRY: He's -- he's the</p> <p>22 hearing officer, and he's</p> <p>23 going to be make the</p>
<p style="text-align: right;">22</p> <p>1 right. Let the Record</p> <p>2 reflect that a copy of</p> <p>3 this post-it note with</p> <p>4 communications from</p> <p>5 Ms. Carr back to</p> <p>6 Ms. Smitherman is entered</p> <p>7 as Exhibit Number 1. I</p> <p>8 need to have these --</p> <p>9 (Off-the-Record discussion.)</p> <p>10 (The referred-to document was</p> <p>11 marked for identification</p> <p>12 as State's Exhibit No. 1.)</p> <p>13 HEARING OFFICER: And also,</p> <p>14 Ms. Shealey, every one of</p> <p>15 these that are marked as</p> <p>16 exhibits with a sticker</p> <p>17 here --</p> <p>18 MS. SHEALEY: Yes, sir.</p> <p>19 HEARING OFFICER: -- before we</p> <p>20 leave today, I'll make</p> <p>21 sure you have a copy of</p> <p>22 every last one of them,</p> <p>23 okay?</p>	<p style="text-align: right;">24</p> <p>1 rulings and -- let me --</p> <p>2 there is a tape recording</p> <p>3 of a conference that took</p> <p>4 place on what date?</p> <p>5 MS. SMITHERMAN: April 27th.</p> <p>6 Well, it took place on</p> <p>7 the 13th. It's</p> <p>8 referenced in the 27th.</p> <p>9 THE REPORTER: It's referenced</p> <p>10 in the 27th --</p> <p>11 MS. SMITHERMAN: April 27th</p> <p>12 documentation.</p> <p>13 MR. PERRY: There was a</p> <p>14 conference that took</p> <p>15 place in which Ms. Carr</p> <p>16 made some statements</p> <p>17 regarding her intention</p> <p>18 to follow directives from</p> <p>19 her supervisor,</p> <p>20 Ms. Smitherman.</p> <p>21 HEARING OFFICER: Okay.</p> <p>22 MR. PERRY: And that</p> <p>23 conference is not on one</p>

EXHIBIT 10
AUDIO TAPE
WILL BE FURNISHED TO THE COURT AFTER THE
FILING OF THIS BRIEF



DEPARTMENT OF YOUTH SERVICES

JOHN STEWART, Ed.D., Superintendent
School District 210

SCHOOL DISTRICT
Post Office Box 66
Mt. Meigs, Alabama 36057
Telephone (334) 215-3850
Fax Number (334) 215-3011

J. WALTER WOOD, JR.
Executive Director

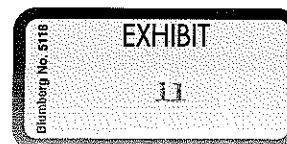
Rec April 26, 2006

DATE: 4/19/2006
TO: MS. RUBY CARR
CC: PERSONNEL FILE
FROM: MS. TRACY SMITHERMAN *PS*
RE: LETTER OF GRIEVANCE - 4/7/06

I thank you for the opportunity to respond to your grievance, it has been informative.

During our discussion on 4/13/06, we discussed the 14 items you listed as concerns of unfair treatment of staff, lack of communication, and the allegation of violation of ethics on your grievance letter. I am going to take this opportunity to address those items that were outlined in your grievance.

- For the record, I have not taken any action motivated by race or retaliation. My actions have been fair and consistent.
- Bullets 4, 6, 7, 8, 10, & 11 are non-grievable because they are not incidents between you and me, your supervisor.
- Bullets 1, 2, 3, 4, 5, 6, 7, 8, 10 & 11 are non-grievable because they were not filed within the time frame allotted by DYS Policy 3.13.1 (see attachment).
- Bullet 9, "I tolerated doing the Federal Programs & Curriculum Coordinator work and not receiving anymore benefits or pay". As covered by your employee performance pre-appraisal it is your responsibility to assist with writing, completing forms and reports, calculate data, interact with individuals, read, file and type written and electronic communications, documentation and other paperwork according to oral and written instructions and DYS policy. The tasks you complain about are part of your job.
- Bullet 12, "I resent not being offered or issued a Gateway Laptop Computer on February 2, 2006". As mentioned in my memo 3/31/06 re: Response to memo: 3/23/06 re: Gateway Laptop computer, I will not discuss with you circumstances regarding equipment issued to other



- employees in circumstances different from yours. It is not necessary for you to have a laptop to meet your job responsibilities.
- Bullet 13, "I resent being retaliated against, unfairly treated and alleged of violation of ethics because I made you aware that it was unfair for a Secretary to be issued a Gateway Laptop and no other individual serving as a Secretary for DYS School District 210 was offered or issued one". There have been no punitive actions taken toward you or against you. You sent documents out of my office referencing confidential documents without my authorization. It is my job to supervise your work and you must perform the responsibilities of your job.
- Bullet 14, "I resent being accused of violation of ethics: In order for me to file the document, I had to look and read to see where to file that particular document. I do not feel that I have violated any ethic concerning the Inventory Property Form". In our discussion you stated you knew what the document was at first glance, because you developed the form. You can determine where to file the document after reading the Issued to: Signature line; therefore, there was no need to continue reading the document. Second, as mentioned above you sent a document out of my office that you were not authorized to send out. Third, sending such a document without a directive is out of your job responsibilities and performing your job responsibilities is important.

In our discussion I asked what you wanted from the grievance process you stated that you want the memo RE: Response to memo: 3/23/06 re: gateway laptop computer removed from your personnel file. I did not carbon copy the memo to your personnel file. If the memo is in your personnel file it is because you attached it to the Grievance Letter and carbon copied it to Ms. Spann, Personal Director. Secondly, you wanted me to admit to and apologize for the items listed in your grievance. I will not meet your unreasonable demands. I hope that this clarified your concerns. I continue to feel you are talented and I am happy to work with someone of your skills but I will not tolerate such conduct as you have exhibited in connection with this matter.

Written documentation of the meeting on April 13, 2006 can be requested from the legal division of the Alabama Department of Youth Services

ATTACHMENT – DYS Policy 3.13.1

**State of Alabama
Department of Youth Services
POLICY AND PROCEDURES**

Related Standards: 3-JTS-1C-01, 3-JTS-1C-07, 3-JTS-1C-13

Chapter: 3 0 Personnel

Subject: Grievance Procedure

Policy Number: 3 13.1

I POLICY

It is recognized that conflicts will develop within an organization between employee and employer. It shall be the policy of DYS to provide to its employees an expeditious and systematic procedure for the resolution and alleviation of grievances as they might arise during the course of performing work-related activities. The grievance procedure is a method of settling disputes and break-downs in communication in a job-related situation. Suspensions and dismissals are not covered by this procedure.

II. DEFINITIONS

Not applicable.

III. PROCEDURES

Central Office or Group Homes

Step A: Within five days of the event, the aggrieved employee should discuss the matter with his immediate supervisor. If not resolved, written documentation of the discussion must be maintained.

Effective Date: JUN 23 1994 Issued By: [Signature] Page 1 of 3

State of Alabama
Department of Youth Services
POLICY AND PROCEDURES

Related Standards: 3-JTS-1C-01, 3-JTS-1C-07, 3-JTS-1C-13

Chapter: 3.0 Personnel

Subject: Grievance Procedure

Policy Number: 3.13.1

documentation and made within ten working days of his supervisor's final decision. The superintendent should respond in writing within ten working days or as soon as practicable after receiving the request.

Step C: If still dissatisfied, the aggrieved employee may request a review of the grievance by the administrator of institutional services. This request must be in writing accompanied by supportive documentation and made within ten working days of the superintendent's written decision. The administrator should respond in writing with ten working days or as soon as practicable after receiving the request.

Step D: If the employee still feels that the decision rendered is not equitable, he may request a review by the Executive Director of DYS. This request must be in writing and filed within ten days of receipt of the administrator's written decision. The Director should reply in writing ten days of receipt of the request or as soon as is practicable.

Step E: The Department considers the decision of the Executive Director to be final. However, the State Personnel Board may elect to consider certain matters upon appeal to that body.

IV. APPLICABILITY

This policy applies to all Department of Youth Services personnel and facilities.

Effective Date: JUN 23 1994 Issued By: [Signature] Page 3 of 3



Welcome, Tracy Smitherman from Department of Youth Services SD 210.

Jump To
School Admin

Prev | Reply | Reply All | Forward | Delete | Report Spam | Move to: Move

From: r.carr.dysd@gaggle.net (Ruby Carr) Add to Address Book
To: t.smitherman.dysd@gaggle.net Show Actual Recipients
Subject: Re: April 17 - Good Morning
Date: Wed 26 Apr 2006 12:58:43 PM -0500 View Header
Good Afternoon Tracy,

I do not recall you informing me that you would be in Birmingham on Monday, April 17, 2006. I was out of the office the week of April 17-21, 2006 due to death in my family. As of this date April 26, 2006 I have not received a monthly calendar from you since July, 2005 in reference to your out-of-the office meetings/training, etc.

April 12, 2006 approximately 8:45 a.m. you enter my office telling me you want me to start taken out the documentation in the SACS folders, shred information with Social Security #'s for teachers/students, file documentation for teachers in their Professional Development folder and throw everything else away.

I informed you that due to your response that I received from you on April 6, 2006 alleging violation of ethics and confidentiality that I did not feel comfortable with removing, shredding, and filing documentation pertaining to teachers and students.

Due to the letter of grievance I submitted to you on April 7, 2006 and until this grievance is resolved I still do not feel comfortable with performing the tasks you have assigned me to do concerning the SACS documentation.

Ruby
-----Original message below-----
Good Morning Ruby,
Just a reminder I will be in Birmingham this morning. You can reach me on my cell, if there is an emergency. Today, I need for you to start going through the SACS boxes and taking out the old information. Please put new face sheets in them and throw away any information that doesn't have personal staff or student information on it. I will go through the sheets with personal information to ensure that they can be shredded. I will be in the office tomorrow, see you then.
Have a good day,
Tracy

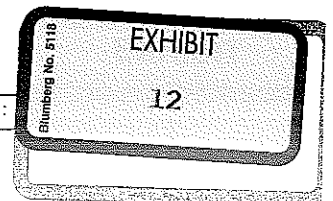
Tracy Smitherman
Department of Youth Services

<http://www.gaggle.net>
Safe e-mail for students and teachers

<http://www.gaggle.net>
Safe e-mail for students and teachers

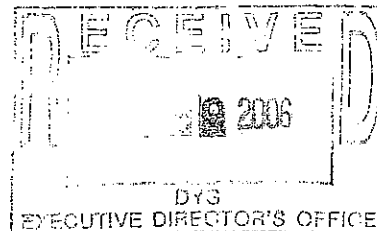
English to Spanish Translate

Prev | Reply | Reply All | Forward | Delete | Report Spam | Move to:



DEPARTMENT OF YOUTH SERVICESJOHN STEWART, Ed.D., Superintendent
School District 210SCHOOL DISTRICT
Post Office Box 66
Mt. Meigs, Alabama 36057
Telephone (334) 215-3850
Fax Number (334) 215-3011J. WALTER WOOD, JR.
Executive DirectorTHIS IS A ☒ WARNING
☐ REPRIMAND

Rec'd May 1, 2006

Employee Name: *Ms. Ruby H. Carr*

State the facts of the performance or work conduct problem:

- *Insubordination: During the discussion on April 13, 2006 concerning her grievance, Ms. Carr stated that she would not take directives from her supervisor, Ms. Smitherman. In addition, Ms. Carr spoke in a loud, belligerent, aggressive and offensive manner.*
- *Insubordination: Ms. Carr has refused to complete directives on March 23, 2006, April 10, and April 26, 2006*

State what actions have been taken with the employee prior to this step of discipline (include counseling, coaching, and/or any disciplinary):

Ms. Carr on January 23, 2006 stated that she will no longer be responsible for maintaining the Property Inventory Register. No formal disciplinary steps were taken. The nature and severity of Ms. Carr actions on April 13, 2006 require formal discipline.

State how the situation can be resolved based on discussion with employee and input from the employee:

Ms. Carr can complete all directives given to her from Ms. Smitherman and she should refrain belligerent, aggressive, loud, or insubordinate conduct.

If an action plan is developed in conjunction with the discipline, include the time frame that is being monitored for change in performance and the follow-up meeting date:

Supervisor's Signature

A handwritten signature in cursive script, appearing to read "Tracy Smitherman".

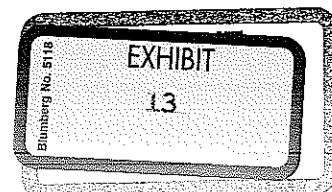
Employee's Signature

Ms. Carr refused to meet

Date of Meeting

April 27, 2006

Employee's signature denotes discussion not necessarily agreement. The employee may add comments that must be attached to this form. The form is kept in the formal employee file.



DEPARTMENT OF YOUTH SERVICES

JOHN STEWART, Ed D., Superintendent
School District 210

SCHOOL DISTRICT
Post Office Box 66
Mt. Meigs, Alabama 36057
Telephone (334) 215-3850
Fax Number (334) 215-3011

J. WALTER WOOD, JR.
Executive Director

THIS IS A ☐ WARNING
☒ REPRIMAND

Rec'd May 1, 2006

Employee Name: *Ms. Ruby H. Carr*

State the facts of the performance or work conduct problem:

- *Insubordination: On April 27, 2006, Ms. Smitherman requested to meet with Ms. Carr for the purpose of a formal session in regard to a written warning in regard to Ms. Carr's conduct on April 13, 2006. Ms. Carr refused to meet with Ms. Smitherman*
- *Insubordination: Ms. Carr has refused to complete directive on April 27, 2006*

State what actions have been taken with the employee prior to this step of discipline (include counseling, coaching, and/or any disciplinary):

On April 27, 2006, Ms. Smitherman requested to meet with Ms. Carr for the purpose of a formal session in regard to a written warning. Ms Carr refused to participate.

State how the situation can be resolved:

Ms. Carr can complete all directives given to her from Ms. Smitherman. Ms. Carr should refrain from inappropriate conduct.

If an action plan is developed in conjunction with the discipline, include the time frame that is being monitored for change in performance and the follow-up meeting date:

- *In three months Ms. Carr and her supervisor, Ms. Smitherman will sit down and re-evaluate if changes have occurred and if directives are being followed.*
- *If Ms. Carr's conduct does not change to meet job standards further disciplinary action will ensue.*

Supervisor's Signature

Tracy Smitherman

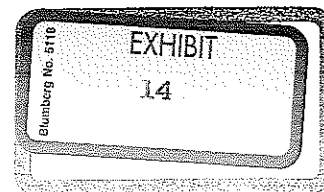
Date: *5/1/06*

Employee's Signature

Refused to sign

Date: *5/1/06*

Employee's signature denotes discussion not necessarily agreement. The employee may add comments that must be attached to this form. The form is kept in the formal employee file.



DEPARTMENT OF **D49** SERVICES

JOHN STEWART, Ed.D., Superintendent
School District 210

SCHOOL DISTRICT
Post Office Box 66
Mt. Meigs, Alabama 36057
Telephone (334) 215-3850
Fax Number (334) 215-3011

J. WALTER WOOD, JR.
Executive Director

Rec' May 10, 2006

DATE: 5/10/2006

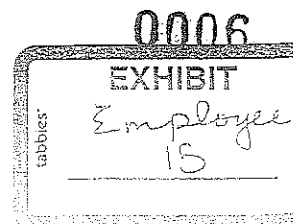
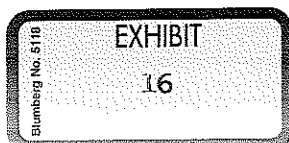
TO: MS. RUBY CARR

CC: FILE

FROM: MS. TRACY SMITHERMAN *TS*

RE: SACS FILES

I have directed you on two different occasions to begin going through the SACS boxes and taking out the old information. I am aware that you have filed a grievance but you can not use the grievance process to pick or choose what job responsibilities you will do. Today, I will be in my office so you will have access to the files or you can put them in your office. Therefore, please go through the SACS files and put new face sheets in them and throw away any information that doesn't have personal staff or student information on it. Any sheet with personal information should be given to me.



5

STATE OF ALABAMA

DEPARTMENT OF YOUTH SERVICES

BOB RILEY
GOVERNOR

POST OFFICE BOX 66
MT MEIGS, ALABAMA 36057

J. WALTER WOOD, JR.
EXECUTIVE DIRECTOR

May 12, 2006

Ms. Ruby Carr
2167 County Road 101
P. O. Box 500
Lafayette, AL 36862

Dear Ms. Carr:

I have received a recommendation from your supervisors that disciplinary action be taken regarding your employment as a Youth Service Aide assigned to District 210. The recommendation reveals the following alleged inappropriate conduct and work performance as the reason for the recommendation:

Violation of the Rules of the State Personnel Board (670-X-19-01 (1e) - Failure to perform job properly) and/or violation of the Rules of the State Personnel Board (670-X-19-01 (1g) - Disruptive conduct of any sort) and/or violation of the Rules of the State Personnel Board (670-X-19-01 (2b) - insubordination): on or about March 23, 2006, you allegedly refused to perform duties assigned to you by your supervisor in writing. Again on or about April 10, 2006; April 26, 2006; April 27, 2006; and May 10, 2006, you allegedly refused to perform these same functions when verbally instructed by your supervisor.

Based on the recommendation, it is my judgment a hearing be held to determine whether disciplinary action is warranted.

A fact finding hearing will be conducted on **Tuesday, May 16, 2006, at 10:00 a.m.**, in the Board Room at the Central Office on the Mt. Meigs Complex in Montgomery County. The hearing will be conducted by either myself or my designee. I will review the information presented and notify you of my decision regarding any possible disciplinary action. At the hearing you may present verbal and written information, produce witnesses and be represented by counsel if you choose. I consider your attendance to be mandatory, but if you do not attend, I will be forced to make my decision based on the information available to me.

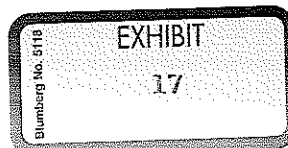
Sincerely,

J. Walter Wood, Jr.

J. Walter Wood, Jr.
Executive Director

JWWJ/pic

c: Mr. Tim Davis
Dr. John Stewart
Legal



ADMINISTRATIVE FACT-FINDING HEARING IN RE: RUBY CARR

May 16, 2006



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ADMINISTRATIVE FACT-FINDING HEARING IN RE: RUBY CARR - 5/16/2006

STATE OF ALABAMA
DEPARTMENT OF YOUTH SERVICES

ADMINISTRATIVE FACT-FINDING HEARING

IN RE: RUBY CARR

The following proceedings were taken before the Alabama Department of Youth Services in the above-referenced matter on May 16th, 2006, commencing at approximately 10:00 a.m. in the Central Office, Mt. Meigs Complex, Department of Youth Services, Montgomery, Alabama, before Karen Reagan Drinkard, CSR, Reporter and Notary Public in and for the State of Alabama at Large.

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19	WITNESS DR. JOHN STEWART	
20	EXAMINATION BY:	
21	MS. SMITHERMAN	244
22	MS. SHEALEY	252

BEFORE:

TIM DAVIS, Hearing Officer,
Deputy Director of Programs

APPEARANCES

FOR THE ALABAMA DEPARTMENT OF YOUTH
SERVICES:

DUDLEY PERRY, ESQUIRE
TRACY SMITHERMAN

FOR THE COMPLAINANT:

IANA JACKSON SHEALEY
Field Staff Representative
Alabama State Employees
Association

ADDITIONAL WITNESS:

DR. JOHN STEWART
State Board of Education

DYS EXHIBITS:

Page

EX-1	Post-it Note with	22
	Handwritten Notes	
EX-2	E-mail Communications	49
	between Ms. Carr and Ms.	
	Smitherman, dated	
	4/17/2006	
EX-3	Memorandum to Ms. Carr	56
	from Ms. Smitherman,	
	dated 5/10/2006	
EX-4	Handwritten Note, dated	60
	4/24/2006	
EX-5	Written Reprimand, dated	114
	5/1/2006, with	
	handwritten note	
EX-6	Written Warning, dated	118
	4/27/2006	

DEFENSE EXHIBITS:

EX-7	Document with Sticky	158
	Note attached, dated	
	3/23/2006	
EX-8	Written Reprimand, dated	162
	5/1/2006, without	
	handwritten note	
EX-9	Document Containing	184
	Several Pages of Tables	
	with Handwritten Notes	

<p>5</p> <p>1</p> <p>2 EX-10 Fax Cover Sheet to Louis 201</p> <p>3 Batoff from Tracy</p> <p>4 Smitherman, dated</p> <p>5 4/26/06, w/ att.</p> <p>6 Memorandum</p> <p>7 EX-11 Letter to Administrators 207</p> <p>8 from Robert Stewart,</p> <p>9 dated 4/10/2006, with</p> <p>10 Handwritten Instructions</p> <p>11 and attached Fax</p> <p>12 Transmittal Sheets</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>EX-12 Excerpt from Statute 306</p> <p>Book</p>	<p>7</p> <p>1 by Ms. Tracy --</p> <p>2 MS. SHEALEY: Smitherman.</p> <p>3 HEARING OFFICER: Smitherman.</p> <p>4 Forgive me. I do know</p> <p>5 your last name. By</p> <p>6 Ms. Tracy Smitherman.</p> <p>7 Okay. And this</p> <p>8 conference is being</p> <p>9 recorded. Also attending</p> <p>10 today's conference are</p> <p>11 Mr. Dudley Perry of the</p> <p>12 DYS legal division. I am</p> <p>13 Tim Davis; I'm the</p> <p>14 hearing officer for</p> <p>15 today. And as stated</p> <p>16 earlier, Tracy Smitherman</p> <p>17 is also in attendance,</p> <p>18 Ms. Jackson Shealey, and</p> <p>19 Ms. Ruby Carr. And we</p> <p>20 may also call any</p> <p>21 additional witnesses as</p> <p>22 needed.</p> <p>23 As indicated in your</p>
<p>6</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 HEARING OFFICER: Okay. This</p> <p>4 is an administrative</p> <p>5 hearing of the Department</p> <p>6 of Youth Services held on</p> <p>7 today -- this is</p> <p>8 May 16th, 2006 -- in the</p> <p>9 central office at the</p> <p>10 Mount Meigs complex in</p> <p>11 Montgomery, Alabama</p> <p>12 This is a fact-finding</p> <p>13 conference concerning</p> <p>14 Ms. Ruby Carr. And she</p> <p>15 is represented by</p> <p>16 Ms. Tana Jackson Shealey;</p> <p>17 she is a field staff</p> <p>18 representative with the</p> <p>19 Alabama State Employees</p> <p>20 Association. This</p> <p>21 hearing is also -- and</p> <p>22 the information presented</p> <p>23 in it is being presented</p>	<p>8</p> <p>1 correspondence from</p> <p>2 Mr. Wood, during this</p> <p>3 conference, you may</p> <p>4 present verbal and</p> <p>5 written information,</p> <p>6 produce witnesses, and be</p> <p>7 represented by legal</p> <p>8 counsel if you so choose.</p> <p>9 Ample time will be</p> <p>10 afforded so that both</p> <p>11 parties will have an</p> <p>12 opportunity to present</p> <p>13 their side.</p> <p>14 This is not an</p> <p>15 adversarial court</p> <p>16 hearing. It is an</p> <p>17 administrative</p> <p>18 fact-finding opportunity</p> <p>19 for me to be appraised of</p> <p>20 all the facts you wish me</p> <p>21 to know. The rules of</p> <p>22 evidence do not apply. I</p> <p>23 will decide and rule on</p>

(Pages 5 to 8)

ADMINISTRATIVE FACT-FINDING HEARING IN RE: RUBY CARR - 5/16/2006

9

11

any objections.

Now, disciplinary action has been recommended based on the following information:

It is alleged that Ms. Carr has violated rules of State Personnel Board -- and this will be in parenthesis -- (670-X-19- 01)(e), this is failure to perform job properly; and/or violation of rules of State Personnel Board, in parenthesis again, (670-X-19- 01)(1g), this is disruptive conduct of any sort and/or violation of the rules of State Personnel Board; (670-X-19- 01)(2b), insubordination. Okay.

supporting documentation. And again, Ms. Carr and Ms. Shealey, you will also be afforded to do the same, okay? Are you ready?
MS. SMITHERMAN: I'm ready.
HEARING OFFICER: Okay Please begin.
MS. SMITHERMAN: Okay. Ms. Carr has developed a pattern of when she's given a directive, she doesn't want to do something, she becomes insubordinate and refuses to do whatever the directive is. She's exhibited this not only in writing, but also verbally. She has become so argumentative in her refusals that it's

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And that on or about March 23rd, 2006, you allegedly refused to perform duties assigned to you by your supervisor in writing. Again, on or about April 10th, 2006, and April 26th, 2006, and April 27th, 2006, and May 10th, 2006, you allegedly refused to perform these same functions when verbally instructed by your supervisor. Now, based on these charges, it's the recommendation that a hearing be held to determine whether disciplinary action is warranted. Okay?

Now, Ms. Smitherman, you may present any witnesses and/or

impossible to use the progressive discipline to work through her issues and concerns. She's yelled; she's pointed her finger; she's slammed the door; she's hollered out in the name of Jesus to remove demons from our office; and she's refused to talk to me. Her behaviors range from insubordination and aggressive to frightening and bizarre. At this point, I'm not only fearful for myself, but also for other staff.

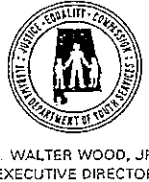
To demonstrate, I'm going to describe her behaviors and performance issues over the past nine months. I've got my



State of Alabama
Department of Youth Services

Post Office Box 66
Mt Meigs, Alabama 36057

June 23, 2006



Ms. Ruby Carr
2167 County Road 101
P O Box 500
Lafayette, AL 36862

Dear Ms. Carr:

As you are aware, an administrative fact finding hearing was held on May 16, 2006, to determine what disciplinary action should be taken concerning your Youth Services Aide position with this department.

Based on the testimony and documents presented during the hearing, there was evidence to support that there was a violation of the violation of the Rules of the State Personnel Board (670-X-19-01 (1e) - Failure to perform job properly) and/or violation of the Rules of the State Personnel Board (670-X-19-01 (1g) - Disruptive conduct of any sort) and/or violation of the Rules of the State Personnel Board (670-X-19-01 (2b) - Insubordination).

Based on the evidence and a review of your personnel file, I hereby order your dismissal from the Department of Youth Services effective at the close of business June 23, 2006. You will receive your last regular pay check on July 14, 2006. You will be paid for any unused annual, holiday, compensatory or personal leave you may have on August 1, 2006.

Your state employees' medical insurance will end on June 30, 2006. If you wish to purchase health insurance coverage you may contact the State Employees Insurance Board at 1-800-513-1384

You may request a refund of your retirement contributions by completing a Form 7, Notice of Final Deposit and Request for Refund. The form may be obtained from the DYS Human Resources Section or from the Retirement Systems website at www.rsa.state.al.us. If you wish, you may leave your contributions on deposit for up to five years.

The Rules of the State Personnel Board state that you may, within ten (10) days after notification of dismissal, request a hearing by the State Personnel Board. The request should include a written answer to the charges.

The request should be addressed to Ms. Jackie Graham, Personnel Director, State Personnel Department, and the request to the Department of

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Received by (Please Print Clearly) _____</p> <p>B. Date of Delivery _____</p> <p>C. Signature _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>E. YES, enter delivery address below: _____</p>	
<p>Article Addressed to:</p> <p>Ruby Carr 2167 County Rd. Lafayette, AL 36862</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>Article Number:</p> <p>7001 1140 0001 8596 4151</p>		<p>RECEIVED</p> <p>JUN 28 2006</p>	



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BEFORE THE
STATE OF ALABAMA
DEPARTMENT OF PERSONNEL
MONTGOMERY, ALABAMA

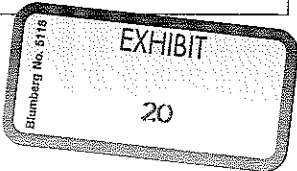
IN THE MATTER OF: RUBY CARR
TERMINATION APPEAL

* * * * *

TESTIMONY AND PROCEEDINGS, taken before
the Honorable Julia J. Weller, Administrative Law
Judge, at The Folsom Administration Building, 64
North Union Street, Montgomery, Alabama, on
Tuesday, September 19, 2006, commencing at
approximately 9:41 a.m., and reported by Laura A.
Head, Licensed Court Reporter and Commissioner
for the State of Alabama at Large.

* * * * *

Laura A. Head, Court Reporter
(334) 286-4938 or (334) 202-4851



APPEARANCES

ADMINISTRATIVE LAW JUDGE:

Honorable Julia J. Weller
Administrative Law Judge
Alabama Department of Personnel
Folsom Administrative Building
64 North Union Street
Montgomery, Alabama 36130

FOR THE DEPARTMENT OF YOUTH SERVICES:

Honorable T. Dudley Perry, Jr.
Deputy Attorney General
Alabama Department of Youth Services
P. O. Box 66
Mt. Meigs, Alabama 36057

FOR THE EMPLOYEE RUBY CARR:

Honorable Jason Manasco
Legal Counsel
Alabama State Employees Association
110 N. Jackson Street
Montgomery, Alabama 36104

* * * * *

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County: **03 - MONTGOMERY** Case Number: **03-CV-2007-000624.00**
 Style: **RUBY H CARR VS PERSONNEL BOARD OF THE STATE OF ALABAMA**
 Type: **APPEAL**

Case

Case Information

County: **03 - MONTGOMERY**
 Case Number: **CV-2007-000624.00**
 JID: **WAS:WILLIAM A. SHASHY**
 Trial: **Bench**
 Style: **RUBY H CARR VS PERSONNEL BOARD OF THE STATE OF ALABAMA**
 Filed: **04/12/2007**

Code: **CVXX**
 Type: **APPEAL**
 Track:
 Status: **D:DISPOSED**
 Plaintiffs: **001**
 Defendants: **001**

Case Typ

Court Action

DJID: **WAS:WILLIAM A. SHASHY**
 Court Action: **D:DISMISSED W/O PREJUDICE/JURIS OR PROS.**
 Judgment For: **0**
 Trial days: **0**

Amount: **\$0.00**
 Compensatory:
 Punitive:
 General:
 None:

Damage:

Other Actions

Cont Date:
 RevJmt:
 Appeal Date:
 Mistrial: **00000000**
 DSDT:

Cont #: **00000000**
 Admin Date:
 Court:

why:
 Why:
 Case: **00-0000-000001**
 TBNV2:
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Comments

Comment 1:
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Consolidated Case Action Summary

Images 03-CV-2007-000624.00

Key	Date	Pages	Document Type	Name	Desc
03-CV-2007-000624.00	4/12/2007	28	CV CASE	PERSONNEL BD AL	COMPL
03-CV-2007-000624.00	4/12/2007	100	CV CASE	PERSONNEL BD AL	COMPL
03-CV-2007-000624.00	4/24/2007	1	CV CASE	PERSONNEL BD AL	SUMM
	4/27/2007	1	E-FILE		E-FILE



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03-CV-2007-000624.00	10/29/2007	100	CV CASE	STATE PERSONNEL BOARD	MISC
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Witness List

Financial

Motions



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CV-2007-000624.00
CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
MELISSA RITTENOUR, CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

RUBY CARR,
Plaintiff,

vs.

STATE OF ALABAMA
PERSONNEL BOARD,
Defendants.

CV No. 07-624

**BRIEF OF RESPONDENTS AND MOTION TO DISMISS BASED UPON LACK
OF SUBJECT MATTER JURISDICTION**

The Alabama State Personnel Board (hereinafter "SPB") hereby files this Brief and Motion to Dismiss based upon lack of subject matter jurisdiction of Petitioner's petition for judicial review under the Administrative Procedures Act.

Undisputed Facts

Petitioner was an employee of the Department of Youth Services and was dismissed effective June 23, 2006. The hearing officer found that the totality of the evidence warranted termination of the Employee and issued her recommendation on December 14, 2006.

1. The Petitioner's dismissal was upheld by the State Personnel Board on February 14, 2007.
2. The Petitioner did not file a notice of appeal with the State Personnel Board
3. The Petitioner filed a notice of appeal with this Court on April 12, 2007

Argument

Specifically, SPB states that this court lacks subject matter jurisdiction for the following reasons:

1. Petitioner failed to fail a notice of appeal with the State Personnel Board
2. Assuming, arguendo, that the agency could be by-passed on the filing of an appeal – the Petitioner failed to timely file an appeal in circuit court within 30 days of the final order.

Failure to file a notice of appeal with the State Personnel Board

A notice of appeal was never filed with the State Personnel Board, nor was a timely appeal filed with DYS or the circuit court.

Appeals from decisions of administrative agencies are statutory, and the time periods provided for the filing of notice of appeals and petitions must be strictly observed. *Ex parte Crestwood Hospital & Nursing Home, Inc* 670 So 2d 45 (Ala. 1995). An appeal may be taken only where authorized by statute and must be perfected in accordance with the law. Section 41-22-20(b) and (d), Ala. Code 1975 states in pertinent part, as follows:

(b) Except in matters for which judicial review is otherwise provided for by law, all proceedings for review shall be instituted by filing of notice of appeal or review and a cost bond, with the agency. A petition shall be filed either in the circuit court of Montgomery county or in the circuit court of the county in which the agency maintains its headquarters, or unless otherwise specifically provided by statute, in the circuit court of the county where a party resides. “

(d) The notice of appeal or review shall be filed within 30 days after the receipt of the notice of or other service of the final decision of the agency upon the petitioner. . .”

Petitioner, in fact, failed to perfect her appeal and it is due to be dismissed. It is undisputed that the Petitioner did not file a notice of appeal with the Alabama State Personnel Board.

Under *Eley v Medical Licensure Commission of Alabama*, 904 So 2d 269 (Ala Civ App 2003) a question arose as to whether a Petitioner could properly by-pass the agency and file an appeal directly with the circuit court. In *Eley*, the Petitioner *within the 30 day time period*, filed a notice of appeal in circuit court and served the Commission. As succinctly set forth in *Eley*, the issue in that case was:

When an appealing party files a petition for judicial review with the appropriate circuit court, and, within 30 days after receipt of the notice or other service of the decision of the agency being appealed, serves a copy of that petition upon the agency by first class mail, does this constitute a “filing” of a “notice of appeal” with the agency for purposes of 41-22-20(b)

In this case, none of the above occurred. Instead, the Petitioner:

1. Failed to file a notice of appeal with the State Personnel Board within 30 days of the order.
2. Failed to file a notice of appeal with the circuit court within 30 days.

In short the Petitioner did not timely file her appeal and this case is due to be dismissed.

Petitioner failed to file an appeal in circuit court within 30 days of the final order.

Assuming, arguendo, that filing a notice of appeal in the circuit court is sufficient to satisfy the statute, this case is still due to be dismissed. The Petitioner’s termination was upheld on February 14, 2007. The notice of appeal was filed in circuit court on April 12, 2007 – well past 30 days after the decision. In *Eitzen v Medical Licensure Commission of Alabama*, 70 So. 2d 1239 (Ala. Civ. App. 1998), the court dismissed the

appeal where the petition failed to file a notice of appeal and instead filed a petition for judicial review. As noted in *Eley*, “There is no indication in the *Eitzen* opinion that the petition for judicial review that was filed with the circuit court in that case was simultaneously served upon the Commission. Even if it had been, as Judge Crawley notes, that petition was filed beyond the 30 day period prescribed by 41-22-20(d).” *Eley* at 275.

Substantial Evidence supports the Termination

Assuming arguendo, that this Court finds that it has subject matter jurisdiction, the Complaint is due to be dismissed. Thus, the following standard of review controls this case:

“[T]he agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute.”

CODE OF ALA. § 41-22-20 (k) (1975)

This statute further provides that the Agency's ruling can be reversed **only** if it is -

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) In violation of any pertinent agency rule;
- (4) Made upon unlawful procedure;
- (5) Affected by other error of law;
- (6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the record as a whole; or
- (7) Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(emphasis added).

As stated, *supra*, the State Personnel Board's order must be taken as prima facie just and reasonable. As held in *Kucera v. Ballard* 485 So. 2d 345 (Ala. Civ. App. 1986), A review of an employee's termination by the Board is only to determine *if the reasons stated for the dismissal are sustained by the evidence* presented at the hearing (emphasis

added). As recognized by *Thompson v. Alabama Department of Mental Health*, 477 So 2d 427 (Ala. 1985), “[I]f there is any evidence to sustain the Board’s decision, this court must affirm. It may not assess the truthfulness of conflicting testimony or substitute its judgment for that of the Board” *Id.*, at 429, citing *King*, 456 So 2d at 82; *Johnston v. State Personnel Board*, 447 So 2d 752 (Ala. Civ. App. 1983); *Beatty v. Hart*, 437 So 2d 594 9Ala. Civ. App. 1983); *Roberson v. Personnel Board*, 390 So 2d 658 (Ala. Civ. App. 1980).

In this case, the Petitioner asks this Court to substitute its judgment for the Board’s judgment – directly in contradiction to the appropriate standard of review in this case. In *Alabama Department of Environmental Management v. Hagood III*, 695 So 2d 48 (Ala. Civ. App. 1997), the Board rejected the Administrative Law Judge’s findings and recommendations and entered an order upholding a dismissal. The Circuit Court overturned the Board’s order, finding that the Board’s rejection of the ALJ’s findings was “unreasonable, arbitrary, and capricious.” *Id.*, at 50. In reversing the circuit court, the Court of Civil Appeals reiterated the proposition that the Court shall not substitute its judgment for that of the Board. Furthermore the Court held:

“[W]e may not assess the truthfulness of conflicting testimony. If we conclude that there was evidence to support the board’s order, then we must affirm.” *Id.* at 50. (citations omitted).

Moreover, the Court in *State Department of Conservation and Natural Resources v. State Personnel Board*, 637 So 2d 894 (Ala. Civ. App. 1994), held:

“While this court may not agree with a Board’s determination we are not at liberty to substitute our judgment, nor to reverse a judgment that is supported by the evidence.”

Id. at 896.

In this case, there was clearly evidence to support the decision of the Board. The ALJ was faced with conflicting testimony, (like almost all hearings) and made a credibility determination. The Petitioner obviously disagrees with this determination, but the decision is supported by the evidence.

Conclusion

Petitioner failed to file a notice of appeal with the State Personnel Board and failed to even file her appeal to circuit court within 30 days after the decision. This case is due to be dismissed for lack of subject matter jurisdiction. Additionally, there was substantial evidence to support the determination by the State Personnel Board and this case is due to be dismissed.

Respectfully submitted,

/s/Alice Ann Byrne
ALICE A. BYRNE (BYR015)
Attorney for Defendants

ADDRESS OF COUNSEL:

State Personnel Department
64 North Union Street
Room 316
Montgomery, Alabama 36130
(334) 242-3450
(334) 353-4481 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on **September 6, 2007**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. I further certify that I have served a copy of the foregoing document upon the following:

**Ruby H. Carr
Post Office Box 500
LaFayette, AL 36862**

by placing the same in first class mail, postage pre-paid, on the same date.

/s/Alice Ann Byrne
OF COUNSEL

CHARGE OF DISCRIMINATION

AGENCY

☐ FEPA☒ EEOC

CHARGE NUMBER

420-2007-01091

Form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

and EEOC

State or local Agency, if any

NAME (Indicate Mr Ms Mrs)

Ruby H. Carr

HOME TELEPHONE (Include Area Code)

(334) 864-0576

STREET ADDRESS

5211 County Road 28

CITY, STATE AND ZIP CODE

Lafayette, AL 36862

DATE OF BIRTH

06-22-1965

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one, list below.)

NAME

Alabama Department of Youth Services

NUMBER OF
EMPLOYEES,
MEMBERS

500+

TELEPHONE (Include
Area Code)

(334) 215-3807

STREET ADDRESS

100 Industrial Road

CITY, STATE AND ZIP CODE

Mt. Meigs, AL 36057

COUNTY

Montgomery

NAME

TELEPHONE (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

DEC - 8 2006

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE

Earliest

Latest

6/23/2006

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s))

I am an African American female citizen of the United States. I was employed with the Alabama Department of Youth Services for seven years as a Youth Services Aide until my unlawful termination on June 23, 2006. The reasons given for my termination were "failure to perform properly, insubordination and disruptive conduct. I believe that my termination was in retaliation for me filing a prior EEOC charge in March 2005 (130-2005-01900) and the settlement of same in October 2005.

In March, 2005, I filed a Charge of Discrimination based on race and sex discrimination and retaliation against Respondent. At the time of my filing, Tracy Smiththerman, a white female, was my supervisor. She remained my supervisor until June 23, 2006. As a result of that charge, I entered into a negotiated Settlement Agreement ("Agreement") with Respondent in October, 2005. I believed that the terms of the Agreement

CONTINUED ON THE NEXT PAGE

☐ I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures

NOTARY (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief

I declare under penalty of perjury that the foregoing is true and correct

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME
THIS DATE (Day month and year)

Date

Charging Party (Signature)

ADDITIONAL PARTICULARS:

would curtail the discriminatory and retaliatory treatment I was subjected to that altered the terms and conditions of my employment. However, the retaliation continued shortly after entering into the Agreement.

First, Respondent failed to comply with all of the terms of the Agreement. Provision

6(A) (1) a & b of the Agreement provides as follows:

a. "The adjustment of Ruby H. Carr's record to reflect forty (40) hours of annual leave for the week of July 5-9, 2004; restoration of any leave or pay deducted for June 28, 2004 and June 29, 2004; removal of the disciplinary actions from Ruby H. Carr's record regarding the failure to report to work dated June 30 and July 1, 2004; re-evaluation and restore Ms. Carr's complete appraisal for the following period of: September 1, 2003, and August 11, 2004;

b. The removal of all three subsequent reprimands for acts of insubordination (Failure to Meet with Ms. Rankins) from Ruby H. Carr's personnel file;"

(emphasis added). On several occasions, I inquired as to whether Respondent had complied with all of the terms of the Agreement. I was aware that the leave time in section "a" had been restored, but to my knowledge, Respondent had failed to comply with the remaining terms.

Respondent clearly failed to remove the negative information outlined above from my personnel file at the Mt. Meigs facility and the one retained by the State of Alabama Personnel Department ("State") in Montgomery. The "reprimands for acts of insubordination (Failure to Meet with Ms. Rankins)" were never removed from my personnel file at Mt. Meigs. I also never received a "re-evaluation and restor[ation of my] complete appraisal for the period of September 1, 2003, and August 11, 2004." Additionally, all documents regarding the "removal of the disciplinary actions from [my] record regarding the failure to report to work dated June 30 and July 1, 2004" were also never removed from my personnel file with the State. The failure to complete the re-evaluation and restoration of my appraisal and the failure to remove the negative information from my file, coupled with the retaliatory treatment I to which I was

subjected following the signing of the Agreement led to my unlawful dismissal on June 23, 2006

On March 20, 2006, I received a mid-appraisal which indicated that I had "performed competently in all 6 areas of responsibility." On April 7, 2006, I filed a letter of grievance after being accused by Smitherman of violating ethical rules. The concerns outlined in my grievance were never addressed. On several occasions I asked for a response to my grievance from the John Stewart, a white male and Smitherman's immediate supervisor, J. Walter Wood, a white male and the Executive Director, and Eddie Johnson, a black male and Chairman of the DYS School Board. The retaliation only escalated. To date, my grievance remains unresolved. Because of the allegations surrounding an alleged violation of ethical rules, my personnel file containing the negative information which remained in violation of the Agreement was reviewed and used as justification for the unfounded reasons given for my termination.

I believe Respondent has retaliated and discriminated against me in the terms and conditions of my employment solely because of my previous charge of discrimination. I believe I am entitled to reinstatement to my former position, back pay, front pay, interest, attorney's fees, costs and liquidated, compensatory and punitive damages.

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Ruby H. Carr
12/7/2006

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BEFORE THE
STATE OF ALABAMA
DEPARTMENT OF PERSONNEL
MONTGOMERY, ALABAMA

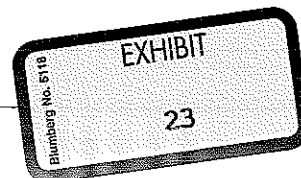
IN THE MATTER OF: RUBY CARR
TERMINATION APPEAL

* * * * *

TESTIMONY AND PROCEEDINGS, taken before
the Honorable Julia J. Weller, Administrative Law
Judge, at The Folsom Administration Building, 64
North Union Street, Montgomery, Alabama, on
Tuesday, September 19, 2006, commencing at
approximately 9:41 a.m., and reported by Laura A.
Head, Licensed Court Reporter and Commissioner
for the State of Alabama at Large.

* * * * *

Laura A. Head, Court Reporter
(334) 286-4938 or (334) 202-4851



1 please, that the statement about a copy of
2 that tape, which was on that recording we
3 heard, was about the first sentence uttered
4 in that conversation.

5 THE COURT: Okay. I think
6 Ms. Smitherman already testified to that,
7 didn't she?

8 MR. PERRY: I don't think so. But we
9 played the tape, and we all heard it. And it
10 was about -- I think the first thing we heard
11 was, you know, Testing, 1, 2, 3. And then
12 Ms. Carr asked, Are you recording. And she
13 said, Yes. And she said, Can I have a copy.
14 That was the first thing on the tape.

15 THE COURT: Okay.

16 MR. PERRY: And it was very soft.

17 THE COURT: All right.

18
19 RUBY CARR

20 The witness, having first been duly
21 sworn to speak the truth, the whole truth, and
22 nothing but the truth, testified as follows:

23 DIRECT EXAMINATION

1 would you word this exactly the way you want
2 me to type it. I'll type it, bring it back
3 to you, we'll make the corrections, and then
4 we'll mail it out.

5 Q. Okay. I believe the testimony of
6 Ms. Smitherman was that you refused to do the
7 work.

8 A. I didn't refuse to do the work. I just asked
9 her if she would word it the way she wanted
10 me to type it, and then I would be more than
11 glad to type it for her. I never received
12 this memorandum back from Ms. Smitherman. I
13 don't know who typed it or if it ever got
14 typed. I just know I never received it back
15 from her in order for me to type.

16 Q. Ms. Smitherman testified earlier that you
17 refused to meet with her on April the 27th
18 regarding her efforts to address what had
19 occurred earlier. Do you agree with that?

20 A. April the 27th?

21 Q. Right.

22 A. I did refuse to meet with Ms. Smitherman.
23 And she had asked me to step into her office,

1 A. To word it for her.

2 Q. Correct.

3 A. But I needed -- I asked for clarification on
4 it when I went back to her. If she would
5 just tell me what she wanted me to type in
6 her own words, I would be more than glad to
7 type it. I did not refuse to type that
8 memorandum.

9 Q. But you didn't type it.

10 A. I didn't refuse to type it.

11 Q. No, ma'am. You didn't type it, did you?

12 A. I did not refuse to type it.

13 Q. Yes or no. Did you type the memo?

14 A. No, I did not type --

15 Q. You did not.

16 A. I didn't type that memo.

17 Q. Now, you had a form in your computer for that
18 very memo, didn't you?

19 A. Not that particular memo. We had an award
20 letter form set up from the year before --

21 Q. That's right.

22 A. -- that was totally different from this
23 particular memorandum here.

1 relinquishing any of the duties.

2 Q. So she didn't instruct you, did she?

3 A. In August she instructed me that I could give
4 the property inventory report to Ms. Kelley.

5 Ms. Kelley said, I'm just coming on.

6 Q. All right. So you chose to -- you said she
7 told you, You can relinquish anything you
8 want, and you chose to relinquish this
9 responsibility of inventory, correct?

10 A. On January 23rd.

11 Q. January the 23rd. And then you set about
12 having that placed in your personnel file,
13 didn't you?

14 A. Yes, I sent copies to files.

15 Q. But you want to make sure that it's perfectly
16 clear that Ruby Carr is not responsible for
17 what's happening with inventory.

18 A. Not exactly. That's not exactly what the
19 reason was. I have always -- any of my
20 memorandums -- if you check my personnel
21 file, my complete personnel file with DYS,
22 every memorandum that I ever sent out
23 concerning anything that were concerning me,

1 I sent it to my personnel file.

2 Q. That's fine.

3 A. I did -- I do do that, Mr. Perry.

4 Q. That's fine. And then you turned right
5 around and began -- and you gathered some
6 information about decisions that had been
7 made on inventory distribution. And although
8 you don't have any responsibility for it,
9 you've just got to file it, when you can
10 clearly see on the top of a document that
11 you've got to file what it is, you took a
12 copy of it and you sent it to a whole list of
13 people with a memo complaining about how
14 unfair it is what's happening with the
15 inventory, didn't you?

16 A. According to --

17 Q. Didn't you? Is that what happened, Ms. Carr?

18 A. That is not exactly the reason that happened.

19 Q. I didn't ask you the reason.

20 A. And that is --

21 Q. I didn't ask you the reason.

22 A. That did not happen.

23 Q. I asked you did that happen.

1 A. That did not happen the way you said it,
2 Mr. Perry.

3 Q. You didn't --

4 A. I was evaluated on March 20th --

5 Q. You didn't do --

6 A. -- and that was considered part of my
7 inventory.

8 Q. You didn't do that memo right there, Exhibit
9 Number 4?

10 A. This is my memorandum.

11 Q. That's what I thought. And you sent it to
12 these people, didn't you?

13 A. I CC'd it to the people that it concerned.

14 Q. That's right. And it concerned them because,
15 in your opinion, they ought to be mad about
16 this.

17 A. Not exactly, no. No.

18 Q. You're saying it's not fair, aren't you?

19 A. I feel that it was unfair for her to issue
20 that laptop computer based upon she told me
21 that the federal funds that those eighty-one
22 computers was purchased with, that it was for
23 teachers. It was specifically in the grant

1 for teachers. And in my past experience with
2 federal funds, the handling of federal funds,
3 if you mishandle them, you could be held
4 accountable for it. I'm just making my
5 supervisor aware of what had happened.

6 Q. Just making your supervisor aware by sending
7 it to all these other people.

8 A. Those people are the people that does --
9 Ms. Kelley is the Technology Coordinator and
10 Mr. Ross is the Property Manager for DYS.
11 Not trying to cause a confusion between
12 anyone --

13 Q. Now, let's see. Let's talk about where we
14 are, Ms. Carr. So far you have decided that
15 you would relinquish your responsibility for
16 inventory. Then you gathered some inventory
17 information and you sent it to some people
18 and had some derogatory things to say about
19 what had been done and that it was unfair.
20 And then you got a response from your
21 supervisor about that, didn't you?

22 A. I felt that it was unfair.

23 Q. I didn't ask you that.

1 A. What tasks?

2 Q. The ones that she testified about.

3 A. Specific tasks.

4 Q. Did you not hear her testimony?

5 A. Exactly what tasks?

6 Q. Did you not hear her testimony? Did you hear
7 her testimony sitting here?

8 A. I heard her testimony, but exactly what tasks
9 are you referring to?

10 Q. You don't remember the tasks that you failed
11 to do?

12 A. The April 27th memorandum.

13 Q. All right. Were there tasks that she
14 testified that she asked you to do that --

15 A. The SACS.

16 Q. You're saying you did that?

17 A. I did not do the SACS.

18 Q. You did not do that. Are you saying that
19 there are -- my question is: You agree that
20 you did not ever complete the tasks that
21 Ms. Smitherman testified about.

22 A. April 10th I completed the task.

23 Q. That's the one that she said you completed,

1 being asked to come into her office --

2 Q. What question are you answering?

3 A. The one in reference to the voice message
4 that was left on her phone May 1st at
5 10:22 a.m. according to the case below. And
6 that was -- when I went back to my office, I
7 called her and asked her if there was
8 anything she had for me to do like she has
9 done everything else -- and I have a notebook
10 full of stuff -- to place it in my mailbox
11 for me. And the letter of reprimand for that
12 particular day that I was supposedly
13 receiving from Ms. Smitherman and
14 Dr. Stewart, I did not get it until I got it
15 out of my mailbox. I got a warning and a
16 reprimand on the exact same day.

17 Q. But you didn't get it because you refused to
18 meet with her, didn't you?

19 A. Based upon --

20 Q. No, no, no. Not based upon anything. I
21 asked you a yes or no question.

22 A. I refused to --

23 Q. You didn't get it because you wouldn't meet

1 with her.

2 A. I refused to meet with her --

3 Q. That's correct.

4 A. -- because of the unsafe --

5 Q. That's correct.

6 A. -- and illegalness of it.

7 Q. You refused to meet with her. And you told
8 her, you know, on a voice mail if she has
9 anything for you, to put it in your box;
10 isn't that correct?

11 A. Place it in my mailbox as she's done
12 everything else.

13 MR. PERRY: That's fine. That's all
14 I've got.

15 THE COURT: Any other follow-up
16 questions?

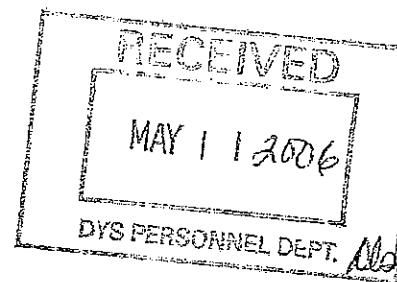
17 MR. MANASCO: I can't think of any,
18 unless the Judge has a question for you.

19 THE COURT: No. You may step down.

20 MR. MANASCO: I'll go get my last
21 witness.

22 MR. PERRY: I just assumed that was
23 your last one.

Memo



To: Tracy Smitherman
Federal Programs & Curriculum Coordinator

From: Ruby H. Carr, Youth Service Aide *Ruby H. Carr*

Date: May 10, 2006

Re: SACS FILES/Addendum to Letter of Grievance

Ms. Smitherman, I received your memo dated May 10, 2006 in reference to the SACS Files today May 10, 2006 approximately 11:00am out of my mailbox.

The two different occasions you have directed me to begin going through the SACS boxes and taking out the old information has been dictated. ***I am not a slave and I am not a child.*** Performing my duties and responsibilities has never been a problem in the past. Also, in the past I have never been directed by you to do anything. Why Now? I was always asked kindly and with respect.

Question: Have you directed (**white female**) Ms. Shelia Turner, ASA III, Stenographer Clerk III, School District Secretary, Administrative Assistant, etc. to begin going through the SACS boxes? Ms. Turner has been serving in her position much longer than I have for DYS School District and should have more knowledge of the SACS files and the documentations.

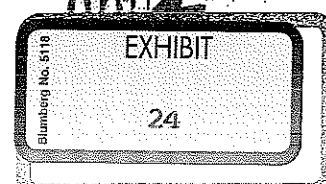
The grievance that I filed was due to your alleged violation of ethics for reading documents. Due to the hostility within the work place that you have created, I do not feel comfortable entering your office, going through, throwing away, or touching any files, documents, information pertaining to SACS or anything else within your office.

Ms. Smitherman, you are continuously harassing me by trying to get me to do something wrong. I have never picked or choose what job responsibilities I will do. Everything that you have asked me to do within my legal rights as a DYS Employee since and before the filing of my grievance, I have done.

The work that I have done for DYS School District 210 speaks for itself. (***To God Be the Glory***)

The other Coordinators (3 Black Females) within DYS School District Central Office are not harassing me. They treat me with kindness and respect and they do not have a personal secretary. I feel that you the Curriculum & Federal Programs Coordinator for DYS School District should be the one to throw away any information and documentations pertaining to SACS Files. I do not know what you consider confidential and in order for me to know what to throw away, I have got to read the document. ***I do not want to do anything wrong that can be considered a violation of ethics for reading documents.***

Please, place the old face sheets in my mailbox just like you have done everything else you have asked me to do and I will prepare new face sheets for your SACS Files and place them in your mailbox. I am not refusing or being insubordinate. I am just trying to do the right thing, keep down the hostility, the office confusion, alleged violation of ethics, etc.



I have made Dr. John Stewart, Superintendent of DYS School District, your supervisor aware of your lack of communication, alleged violation of ethics, a warning, a reprimand, harassment, hostile work environment, racism, discrimination, dictatorship, and retaliation I feel has been exhibit by you Ms. Tracy Smitherman because I filed a grievance. In addition, I have requested Dr. John Stewart, Superintendent of DYS School District 210 to please relieve me of my duties, responsibilities, and implied supervision to you Tracy Smitherman, Curriculum & Federal Programs Coordinator effective immediately.

cc: Dr. John Stewart
Ms. Debra Spann
Mr. Tim Davis
Ms. Marcia Calender
Mr. J. Walter Wood

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